***United States Court of Appeals***

***for the***

***District of Columbia Circuit***

# TRANSCRIPT OF RECORD

864

BRIEF FOR PETITIONERS AND JOINT APPENDIX

IN THE

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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## No. 21,573

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JEANNETTE LENKIN, HARRY A. LENKIN and SOPHIE H. LENKIN, trading as LENCSHIRE HOUSE COMPANY, *Petitioners*

v.

DISTRICT OF COLUMBIA, *Respondent*

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**On Petition for Review of a Decision of the District of Columbia Tax Court**

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## QUESTIONS PRESENTED

1. Whether it was error for the District of Columbia Tax Court to hold that where a corporate liquidation results in no taxable dividend, the former stockholders must compute depreciation deductions for District of Columbia tax purposes by reference to an amount limited to their investment in the corporation's capital stock.

2. Whether it was error for the District of Columbia Tax Court to rule that following a corporate liquidation in which property is distributed subject to an indebtedness, the former stockholders, in computing depreciation on such distributed property, may not consider said indebtedness as part of their investment to be recovered through depreciation.

3. Whether a "reasonable allowance" for depreciation as a deduction for income and franchise tax purposes does not require consideration of the sums representing an encumbrance on property owned by the former corporate stockholders.

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**On Petition for Review of a Decision of the District of Columbia Tax Court**

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## BRIEF FOR PETITIONERS

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### JURISDICTIONAL STATEMENT

This is a proceeding to review a decision of the District of Columbia Tax Court, based upon its findings of fact and conclusions of law which partially affirmed the assessment of deficiencies in franchise taxes for the periods ended December 31, 1964 and December 31, 1965. The decision of the Tax Court, identified there as Docket No. 2026, was entered on November 12, 1967. The petitioners petitioned for review by this Court on December 5, 1967.

The jurisdiction of this Court is invoked pursuant to Sections 3 and 4, Title IX of the Act of August 17, 1937, 50 Stat. 673, ch. 690, as added by Section 8 of the Act of May 16, 1938, 52 Stat. 371, ch. 223; and as amended by Section 5 of the Act of July 26, 1939, 53 Stat. 1108, ch. 367, as amended by Section 3 of the Act of July 10 1952, 66 Stat. 543, ch. 649 (Sections 47-2403 and 2404, D. C. Code, 1967.)

## STATEMENT OF THE CASE

The facts in this case were fully stipulated and can be summarized as follows:

The stipulation which appears in full in the joint appendix (J.A. 20-40) reveals that the individual petitioners are members of a partnership which was organized simultaneously with the liquidation of a corporation known as Lencshire House, Inc. (J.A. 20-21). On March 27, 1964, the individual petitioners became the distributees of all of the assets of the aforementioned corporation, subject to all of its liabilities (J.A. 21). Prior to that date, and since March 21, 1949, Lencshire House, Inc. had owned and operated an apartment house, known for purposes of taxation as Lot 64 in Square 1923, and improved by premises 3140 Wisconsin Avenue, N. W., Washington, D. C. (J.A. 20). The individual petitioners were the only stockholders of said corporation, owning capital stock therein in the same proportions as is represented by their present respective partnership interests (J.A. 20). Pursuant to action of the board of directors of Lencshire House, Inc., the stockholders approved a plan of liquidation which was implemented on March 27, 1964; copies of the corporate minutes reflecting the actions of the directors and stockholders appear as part of the stipulation adopted by the Tax Court (J.A. 22-27). In accordance with the plan of liquidation, the corporate real property was conveyed to the individual petitioners as tenants in common. (J.A. 21). At the time of such conveyance, the real property referred to above was subject to an encumbrance of a first deed of trust, securing

a promissory note of the corporation having an unpaid balance, as of March 27, 1964, of $795,948.76 (including accrued interest) (J.A. 21). The complete balance sheet of Lencshire House, Inc. as of the date of liquidation appears as an exhibit to the stipulation (J.A. 29). The promissory note in existence at the time of liquidation was subsequently paid in full as part of a refinancing (J.A. 21). In filing its franchise tax returns for the taxable periods ended December 31, 1964 and December 31, 1965, petitioners based their depreciation deductions on the property received in liquidation on a fair market value of improvements in the amount of $884,742.45 (J.A. 21). Based on such valuation, petitioners claimed depreciation deductions of $39,939.41 and $50,866.98, respectively, for the two taxable periods involved (J.A. 21). The Tax Court valued the distributed property at $1,500.00 (J.A. 19). The balance sheet of Lencshire House, Inc. reflects that the fixed assets of that corporation (exclusive of land) were acquired at a cost of $1,083,737.59, of which $461,869.50 had been recovered as depreciation up to the time of liquidation, leaving a balance of $621,868.09 (J.A. 29).

## STATUTES INVOLVED

### District of Columbia Code (1967) Title 47

§ 47-1551c. GENERAL DEFINITIONS.

* * * * * * * * *

(m) The word "dividend" means any distribution made by a corporation (domestic or foreign) to its stockholders or members, out of its earnings, profits, or surplus (other than paid-in surplus), whenever earned by the corporation and whether made in cash or any other property (other than stock of the same class in the corporation if the recipient of such stock dividend has neither received nor exercised an option to receive such dividend in cash or in property other than stock instead of stock) and whether distributed prior to, during, upon, or after liquidation or dissolution of the corporation: *Provided, however,* That in the case of any dividend which is distributed other

than in cash or stock in the same class in the corporation and not exempted from tax under this subchapter, the basis of tax to the recipient thereof shall be the market value of such property at the time of such distribution: *And provided, however,* That the word "dividend" shall not include any dividend paid by a mutual life insurance company to its shareholders.

§ 47-1557b(a). DEDUCTIONS.

* * * * * * * * *

(7) *Depreciation.*—A reasonable allowance for exhaustion, wear, and tear of property used in the trade or business, including a reasonable allowance for obsolescence; and including in the case of natural resources allowances for depletion as permitted by reasonable rules and regulations which the Commissioners are hereby authorized to promulgate. The basis upon which such allowances are to be computed is the basis provided for in section 47-1583e.

§ 47-1583e. DEPRECIATION.

The bases used in determining the amount allowable as a deduction from gross income under the provisions of section 47-1557b (a) (7) shall be—

(a) where the property was acquired after December 31, 1938, by purchase, the basis shall be the cost thereof to the taxpayer;

(b) where the property was received in exchange for other property after December 31, 1938, the basis shall be the market value thereof at the time of such exchange;

(c) where the property was inherited or acquired by gift after December 31, 1938, the basis shall be that defined in subsection 47-1583 (b) (3);

(d) if the property was acquired prior to January 1, 1939, the appropriate basis set forth in subsection (a), (b), or (c) of this section shall be used: *Provided, however,* That the taxpayer may, at his option, use as the basis the market value of such property as of January 1, 1939;

* * * * * * * * *

## POINTS RELIED ON

1. That a correct interpretation of the applicable statute and the previous decisions of this Court require the allowance of depreciation deductions based on the fair market value of property distributed pursuant to the complete liquidation of a corporation.

2. In the alternative, the basis of depreciation for such distributed property must take into account the amount of liens and encumbrances to which it was subject at the time of liquidation.

## PRELIMINARY STATEMENT

As has already been stated, the facts in this case have been fully stipulated and the parties are in agreement that there are only legal questions to be resolved.

The record shows that prior to March 27, 1964, Lencshire House, Inc. owned and operated an apartment house located at 3140 Wisconsin Avenue, N. W., in the District of Columbia, and known for purposes of taxation as Lot 64 in Square 1923. Pursuant to action of the corporation's directors and stockholders, Lencshire House, Inc. terminated its business activities on the aforementioned date. In accordance with a formal plan of liquidation, the corporation on that date conveyed and transferred all assets, subject to any liens and encumbrances, to its stockholders who thereupon became the joint owners of the former corporate property. From that time, the apartment house has been operated as a partnership, which for District tax purposes is classified as an unincorporated business.

At the time Lencshire House, Inc. was liquidated, its balance sheet reflected cost of land of $42,529.04 and cost of improvements, equipment etc. of $1,083,737.59. The balance sheet further showed that the corporation as of March 27, 1964 had accumulated a depreciation reserve of $461,869.50, and that the above-mentioned real property was encumbered

by a mortgage (or deed of trust) with an unpaid balance (inclusive of interest) in the amount of $795,948.76.

The liquidation of the corporation was carried out pursuant to § 333 of the Federal Internal Revenue Code, i.e. no gain was recognized by reason of fair market value appreciation. No fair market value was recognized for District tax purposes and since there were no accumulated earnings and profits, no liquidating dividend resulted under District law. *District of Columbia* v. *Oppenheimer*, 112 U.S. App. D.C. 239, 301 F. 2d 563 (1962). For the taxable periods ended in 1964 and 1965, the petitioners filed their District franchise tax returns claiming depreciation deductions in the sums of $39,939.41 and $50,866.98, respectively. These deductions were computed on the basis of a fair market value of $966,273.37 of which $884,742.45 was allocated to improvements. The respondent disallowed the claimed deductions in full.

The Tax Court accepted the respondent's position, except that it held that petitioners were entitled to recover depreciation on their investment in the Corporation's capital stock which amounted to $1,500.00.

## SUMMARY OF ARGUMENT

This case concerns the sole question of the allowability of depreciation deductions for purposes of the District of Columbia franchise tax, under circumstances where real property is distributed to stockholders in complete liquidation and final cancellation of capital stock.

The District of Columbia Tax Court, believing to be bound to this decision by previous opinions of this Court, ruled that the former stockholders' basis for depreciation is limited to their invested capital and earned surplus, if any, and that neither fair market value nor any existing indebtedness on the property, are factors to be considered in the allowance of the deduction.

The petitioners contend that the Tax Court's solution to the problem is erroneous on alternative grounds. In the petitioners' view, this Court's opinions in *Snow* v. *District of Columbia,* 124 U.S. App. D.C. 69, 361 F. 2d 523 (1965) and *Oppenheimer* v. *District of Columbia,* 124 U.S. App. D.C. 221, 363 F. 2d 708 (1966) in significant respects cannot be reconciled. They further contend that a review of the entire matter of corporate liquidations should lead to the conclusion that such transactions are indeed a form of "exchange" which creates a basis for depreciation founded on fair market value. To the extent necessary, we submit, that contrary language in *Oppenheimer supra* should be expressly overruled.

Alternatively, if this Court does not accept the "exchange" theory of corporate liquidations, the Tax Court should be overruled on other grounds. As will be shown below, the petitioners' investment to be recovered through depreciation was in no sense limited to their original cost of capital stock. The very substantial indebtedness to which the distributed real property was subject cannot be disregarded in determining the correct measure of depreciation.

## ARGUMENT

### I

### A Re-examination of This Court's Earlier Opinions Should Lead to the Conclusion That a Complete Corporate Liquidation Does Indeed Involve an "Exchange".

To present a comprehensive account of the present status of the law on the question here involved, it is first necessary to state that the concept of a taxable dividend under § 47-1551c(m), D.C. Code (1967) is not in doubt, nor does it provide a meaningful answer to the instant problems. The plain meaning of the statute demonstrates that a dividend is a distribution from the earnings of a corporation prior to, during, upon, or after liquidation. This Court in *District*

*of Columbia* v. *Oppenheimer, supra,* held that a taxable dividend does not include the unrealized appreciation of the corporation's property. Thus, when a corporation is liquidated, any increment in the market value of its assets accrues to the benefit of its stockholders for the simple reason that the corporation had never "earned" such increment. This position is consistent with this Court's opinion in *Berliner* v. *District of Columbia,* 103 U.S. App. D.C. 351, 258 F. 2d 651, (1958) cert. den., 357 U.S. 937, 78 S. Ct. 1384, 2 L. Ed. 2d 1551, which stands for no other principle, except that earnings of a corporation—even when realized in the course of liquidation—give rise to a taxable dividend.

It is the connection, or the supposed interrelationship, between the section of our law defining a taxable dividend and the provisions dealing with bases for depreciation that has caused the present difficulties.

At the root of the question lies the provision in our law, § 47-1557b(a)(7), D.C. Code (1967) calling for a deduction of a "reasonable allowance for exhaustion, wear, and tear of property used in trade or business . . . . ." The statute continues that the "basis upon which such allowances are to be computed is the basis provided for in Section 47-1583e." The latter section, reproduced in full in this brief (p. 4) sets forth four subsections describing various circumstances under which property can be acquired. Subsection (b) of that section states that where property is received in "exchange" after December 31, 1938, the basis for depreciation "shall be the market value thereof."

Following the decision in *District of Columbia* v. *Oppenheimer, supra* [for convenience hereinafter called "first *Oppenheimer*"], the first case to present the "basis" problem for consideration by this Court was *Snow* v. *District of Columbia, supra,* decided on November 22, 1965. The petitioner in that case had purchased corporate stock for $1,000,000., liquidated the corporation and transferred the assets to himself as its sole stockholder. At the time of the

liquidation, the corporation's books reflected earned surplus in the amount of $300,000. In summary, this Court decided as follows: (1) the taxpayer received a dividend of $300,000., (2) sustained a loss on the disposition of his stock of $300,000. and (3) became entitled to a basis for depreciating the transferred property in the amount of his cost, i.e., $1,000,000.

In the course of discussing the reasons for its rulings, the Court had occasion to consider the all-important question whether under District law, a corporate liquidation involves an "exchange". The respondent contended in *Snow* that this Court in *Berliner* had held that a liquidating dividend upon dissolution did "not constitute a sale or exchange." In answering this contention, Judge Prettyman speaking for the Court said the following:

> "We did not so hold. That opinion was meticulous in repeatedly pointing out that we were dealing with a distribution of earnings, on surplus. From the opening statement of the question presented 'whether amounts distributed in complete liquidation of a corporation, to the extent that these amounts . . . . represent corporate earnings, are properly includible in the stockholders' gross income as a dividend', repeatedly throughout the opinion to the final sentence, '. . . . to treat distributions in liquidation as dividends to the extent that earnings are included . . . .', we iterated and reteirated that our subject was a distribution of earnings . . . .
>
> Berliner dealt with the distribution of earnings, clearly, emphatically and exclusively . . ."

While the first part of the *Snow* opinion deals with the tax consequences of the liquidation itself and rejects the contention that because of the holding in *Berliner*, no exchange was involved, the Court then proceeded to consider the proper basis for depreciation following liquidation. Significantly, the District had allowed a basis, determined by reference to book value of the property in the hands of

the corporation. Yet, the Court, relying on the language providing for a "reasonable allowance" for depreciation [§ 47-1557b(a)(7)], expressly holds that the taxpayer's basis for depreciation is his cost of the stock [minus some proportion thereof, presumably to be allocated to land]. Moreover, in support of this conclusion, the Court points to § 47-1583e(b) as well as § 47-1583e(a), the former governing basis in case of exchanges, the latter applying to purchases. Since in the case then under review, cost and fair market value were identical, the same conclusion could be reached by reference to either clause. However, what is most important in the present context is the fact that this Court in *Snow* adopted an "exchange" approach to the problems created by a corporate liquidation, notwithstanding the circumstance—so strongly emphasized in *Oppenheimer* v. *District of Columbia, supra,* [hereinafter referred to as "second Oppenheimer"] that the taxpayer was realizing the benefit of a stepped-up basis for depreciation which had not been subjected to District of Columbia tax.*

On June 17, 1966, this Court decided the second *Oppenheimer* case. That appeal was limited to the single question of the correct basis for depreciation following a corporate liquidation in which earned surplus only was taxed as a liquidating dividend. The Tax Court allowed a basis equivalent to the amount of the taxed surplus and paid in capital. In affirming the Tax Court, this Court expressly rejected the taxpayer's contention that she was entitled to base depreciation on the fair market value of the property on the grounds that there had been an exchange under § 47-1583e(b). The Court apparently believed that because the Federal statute dealing with liquidating distributions provides that they "shall be treated as payments in exchange for stock or shares" (124 U.S. App. D.C. 224),

* It should be pointed out that the Court allows Snow a basis of approximately $1,000,000., where only $300,000. was taxed as a dividend which, in turn, was offset by a loss in like amount.

and no similar provision has been made in District law, the Congress has deliberately determined a different method of taxing capital gains as well as establishing bases for depreciation.

The Court in approving the Tax Court's resolution of the depreciation question, seemingly concurs with the views attributed to respondent, i.e. notwithstanding a taxpayer's inability to bring himself within any of the basis categories of § 47-1583e, property used in trade or business should be subject to *some* allowance for depreciation. Apparently, the majority in the second *Oppenheimer* case relied on the District's representations that an appropriate depreciation deduction would be made available in future comparable instances, leaving for subsequent decision the evaluation of any allowance so made and challenged on appeal.

Mention should be made of the separate views of Judge Danaher in the second *Oppenheimer* case. He believes, contrary to the opinions of the division's other judges, that there is no need to reserve any part of the problem for later consideration. Judge Danaher finds § 47-1583e to represent an enumeration of the *only* circumstances under which a taxpayer can acquire a basis for depreciation. Accordingly, in his view, there being no "exchange", there is no authority to grant a depreciation allowance in any amount to the former stockholders of a liquidated corporation.

Against this background of decided cases, the Tax Court held that these petitioners are not entitled to any allowance for depreciation, except for the minimal amount of original costs paid for their corporate stock. We submit that a correct interpretation of this Court's decision in the *Snow* case should lead to a modification of the views in second *Oppenheimer*.

The fundamental difficulty in applying our statutes to the fact situations such as those in the instant case, is caused

by the unusual manner in which Congress has seen fit to tax transactions involving so-called "capital assets". This term has been defined in our code as any property, real or personal, held for more than two years. § 47-1551c(1). By virtue of § 47-1557a, income derived from such assets has been specifically excluded from taxable gross income. This exemption is not limited to sales and exchanges, but has been held to relate in the same manner to all forms of capital distributions, such as those from depreciation reserves. *District of Columbia* v. *Goldman,* 117 U.S. App. D.C. 219, 328 F. 2d 520 (1963), in which the following was said:

> "Encouragement of an investor in the economic life of the District is thus afforded, with complete exemption from tax on the capital gain where the sale or exchange of the property takes place with reference to property held for two years or more. The speculator trading out in less than two years is taxed; the investor is not."

Thus, it is clear that there are many possibilities involving the disposition of a capital asset in which the District cannot collect a tax, and yet a recoverable basis results. For example, the outright sale of depreciable property held for more than two years could be totally tax-exempt. But, no one would dispute that the purchaser is entitled to recover his cost, notwithstanding the fact that the sale yielded no taxable gain. That this reasoning applies to corporate liquidations as well is shown by the holding in *Snow* in which the taxpayer was permitted to recoup his investment, although the corporation's liquidation did not produce any tax to the District.

What troubled the majority in the second *Oppenheimer* case was the fact that the petitioner was seeking a stepped-up depreciation basis by reference to a market value on which she had paid no tax. If this be deemed to be an unfair advantage, however, it is inherent in the District tax laws and any correction thereof should be accomplished by

legislative rather than judicial means. The Court held that the word "exchange" was to be given a meaning "uncomplicated by tax considerations" and that such meaning did not warrant the interpretation urged by the taxpayer. It is true that a corporate liquidation can, and often is, described in terms which do not compel adoption of an "exchange" theory, but rather emphasize the interests, both legal and equitable, possessed by a stockholder in the assets of a corporation, before and after liquidation. *Gibbons* v. *Mahan,* 136 U.S. 549, 10 S. Ct. 1057, 34 L. Ed. 525; *Berl* v. *Crutcher* (5th Cir. 1932) 60 F. 2d 440. But, although recognizing that Congress in the revenue laws has specified that "ambiguous transactions" are to be regarded as "exchanges", the Supreme Court in stating the ordinary meaning of that term as the "reciprocal transfer of capital assets" has furnished a definition which is certainly highly appropriate to the facts of a corporate liquidation. *Helvering* v. *William Flaccus Oak Leather Co.,* 313 U.S. 247, 61 S. Ct. 878, 85 L. Ed. 1310 (1941). Recognizing that it is the ordinary meaning of the terms that is to be sought, we submit that the word "exchange" in § 47-1583e(b) appears in a tax statute and, therefore, should be understood in that context. Is it, therefore, reasonable to suppose that the Congress, already accustomed to classifying "ambiguous transactions" as exchanges, intended to employ the word in a sense foreign to tax concepts? Since 1918, the Federal revenue laws had required that liquidating distributions are to be treated as payments in exchange for stock. In a tax-sense, at least, the term had acquired this meaning [to include liquidations]. Especially, in the absence of any meaningful language in §-47-1583e that otherwise gives recognition to liquidations, we submit, the legislative intent must have been to embrace the entire concept of what was then commonly understood to be an "exchange" for tax purposes. If the Congress had desired to prescribe a different basis for property received in corporate liquidations, or other non-taxable exchanges, it certainly could have done so by suitable language.

## II

### The Reasonable Allowance for Depreciation Required by Statute Must Take Into Account Indebtedness on Property Used in Trade or Business.

As much as the second *Oppenheimer* and *Snow* decisions are at variance in important respects, they appear to be in full agreement on the basic principle that the owner of property used in trade or business is entitled under § 47-1557b (a)(7) to a "reasonable" allowance for depreciation of such property. In *Snow*, the taxpayer was permitted to depreciate his total cost; in second *Oppenheimer*, the petitioner was held to be limited to surplus and paid-in capital, although for the years under review, the Court upheld the Tax Court in not allowing any deduction.

The remainder of our statements in this brief are predicated on the alternative contention that, if this Court adheres to the view that the stockholder-distributees of property in a corporate liquidation are not entitled to base their depreciation deductions on fair market value, they should in all events be able to claim depreciation with respect to their total investment, including any indebtedness to which the property was subject.

In the instant case, the corporation owned improvements that it had acquired at an initial cost of $1,083,737.59. On these improvements, it had deducted depreciation of $461,869.50, thus leaving undepreciated costs of $621,868.09 at the time the corporation was liquidated. In addition, there was an encumbrance on the real property, securing a promissory note with an unpaid balance of $795,948.76. This obligation was satisfied following liquidation by means of refinancing the property.

The Tax Court apparently believed that this Court's ruling in second *Oppenheimer* requires the conclusion that the petitioners' basis for depreciation is equivalent to surplus and paid-in capital. Since there was no surplus in the present case, the Tax Court held that petitioners' basis for

depreciation was $1,500—the original cost of their capital stock. The result of this decision is three-fold: not only are the taxpayers prohibited from basing depreciation deductions on fair market value, but they also forfeit any unrecovered cost prior to liquidation and they are prevented from considering for depreciation any part of the indebtedness which is repaid in the course of the operation of the property. We submit that neither our statutes, nor the opinions of this Court mandate this result.

We have already indicated that this Court's statements in the second *Oppenheimer* case strongly suggest that it was relying on the respondent's representations to make reasonable allowances for depreciation available as part of the fair administration of the tax laws. Except for the views of one of the members of the panel, this Court did not seem to accept the proposition that failure of a taxpayer to bring himself within the literal "basis" provisions of § 47-1583e causes the disallowance of *all* depreciation deductions. Even more plainly, the decision in *Snow* leads the way to the correct answer. There, the Court in the "depreciation portion" of its opinion, emphasizes the fact that the taxpayer must be placed in the position of recovering his investment, which in that instance was identical with his cost.

Our statute, § 47-1557b(a)(7), in allowing a "reasonable" deduction for "exhaustion, wear and tear of property used in trade or business" is declaratory of an economic fact. It has been universally recognized that in determining taxable income, provisions should be made that will have the effect of creating a tax-free fund to enable the owner to restore his investment when its useful life has been exhausted. *Detroit Edison Co.* v. *Commissioner,* 319 U.S. 98, 63 S. Ct. 902, 87 L. Ed. 1286 (1943). Mr. Justice Jackson in the aforementioned case said the following:

> "The end and purpose of it all is to approximate and reflect the financial consequences to the taxpayer of the subtle effects of time and use on the value of his capital asset."

It is significant that the statutory allowance relates to depreciation of the *property*, not of the equity in the property. This points the way to the heart of this case. Admittedly, the stockholders of Lencshire House, Inc. had no equity left in the property they received from the corporation. But does it follow that they had no property that would continue to depreciate? Certainly not; they were now the joint owners of real property the income from which constitutes their trade or business. The "exhaustion, wear and tear" of the building and improvements did not suddenly come to a halt, merely because there was a new name on the deed. The corporation's right to deduct depreciation from the gross income produced by the property was the result of a legislative grant to recapture its investment in the property—not to re-pay the shareholders their investment in their stock. To accomplish this objective, estimates of economic and physical useful life of the property are used as a measure of a reasonable deduction. The respondent has not challenged the deduction on grounds that it fails to meet the test of reasonableness, but simply on the basis that it was not available at all.

Petitioners say that they had a substantial investment in the former corporate property following the liquidation. What did it consist of? As of March 27, 1964, there remained an unrecovered cost of improvements, equipment, etc. of $621,868.09. But more importantly, the real estate distributed in kind was subject to an indebtedness of $795,948.76. It is obvious that this indebtedness would have to be paid by the stockholders as part of their operation of the business. During the course of the hearing in this case, and in its opinion, the Tax Court emphasized the fact that the members of the partnership did not legally assume the mortgage and thus were not personally obligated to pay the mortgage. (J.A. 18). We submit that in determining the amount of investment to be returned through depreciation, this distinction is not controlling.

This precise question was fully and finally adjudicated by the United States Supreme Court in *Crane* v. *Commissioner,* 331 U.S. 1, 91 L. Ed. 1301, 67 S. Ct. 1047 (1947). In that case it was held that where property is inherited, the basis for depreciation would have to include the amount of the mortgage to which the property was subject. Chief Justice Vinson, speaking for the Court, expressed the principle as follows:

> "A further reason why the word 'property' in § 113 (a) should not be construed to mean 'equity' is the bearing such construction would have on the allowance of deductions for depreciation and on the collateral adjustments of basis.
>
> Section 23(l) permits deduction from gross income of 'a reasonable allowance for the exhaustion, wear and tear of property * * *.' Sections 23(n) and 114(a), 26 U.S.C.A. Int. Rev. Code, §§ 23(n), 114(a), declare that the 'basis upon which depletion exhaustion, wear and tear * * * are to be allowed' is the basis 'provided in section 113(b) for the purpose of determining the gain upon the sale' of the property, which is the § 113(a) basis 'adjusted * * * for exhaustion, wear and tear * * * to the extent allowed (but not less than the amount allowable) * * *.'
>
> Under these provisions, if the mortgagor's equity were the § 113(a) basis, it would also be the original basis from which depreciation allowances are deducted. If it is, and if the amount of the annual allowances were to be computed on that value, as would then seem to be required, they will represent only a fraction of the cost of the corresponding physical exhaustion, and any recoupment by the mortgagor of the remainder of that cost can be effected only by the reduction of his taxable gain in the year of sale. If, however, the amount of the annual allowances were to be computed on the value of the property, and then deducted from an equity basis, we would in some instances have to accept deductions from a minus basis or deny deductions altogether. The Commissioner also argues that taking the mortgagor's equity as the § 113(a) basis would require the basis to be changed with each payment on

> the mortgage, and that the attendant problem of repeatedly recomputing basis and annual allowances would be a tremendous accounting burden on both the Commissioner and the taxpayer. Moreover, the mortgagor would acquire control over the timing of his depreciation allowances.
>
> Thus it appears that the applicable provisions of the Act expressly preclude an equity basis, and the use of it is contrary to certain implicit principles of income tax depreciation, and entails very great administrative difficulties. It may be added that the Treasury has never furnished a guide through the maze of problems that arise in connection with depreciating an equity basis, but, on the contrary, has consistently permitted the amount of depreciation allowances to be computed on the full value of the property, and subtracted from it as a basis. Surely, Congress' long-continued acceptance of this situation gives it full legislative endorsement." [Footnotes omitted]

See also: *Parker* v. *Delaney* (1st Cir. 1950) 186 F. 2d 455.

We thus conclude that in the field of Federal taxation, there can be no doubt that the technical difference between an assumed mortgage and property subject to an indebtedness can have no effect on the owner's right to claim a depreciation deduction. See also: Merten's Law of Federal Income Taxation, § 21.11.

The Tax Court of the United States has recently restated this rule in *Manuel D. Mayerson,* 47 T.C. 340 (1966), as follows:

> "The element of the lack of personal liability has little real significance due to common business practices. As we have indicated in our findings it is not at all unusual in current mortgage financing of income-producing properties to limit liability to the property involved. Taxpayers who are not personally liable for encumbrances on property should be allowed depreciation deductions affording competitive equality with taxpayers who are personally liable for encumbrances or taxpayers who own unencumbered property. The effect of such a policy is to give the taxpayer an advance

> credit for the amount of the mortgage. This appears to be reasonable since it can be assumed that a capital investment in the amount of the mortgage will eventually occur despite the absence of personal liability. The respondent has not suggested any rationale that would reasonably require a contrary conclusion".

Moreover, it should be pointed out that under Maryland's corporation law, applicable in this case, the directors, who were the same persons as the stockholders, could not avoid liability for the mortgage debt by the act of dissolution. For under § 78(b), Article 23, of the Maryland Code (1957), directors of a dissolved corporation become trustees for the payment of corporate debts.

The liquidation of Lencshire House, Inc. as stated above, for Federal income tax purposes, was carried out under the provisions of § 333 of the Internal Revenue Code. No gain was recognized as a result of increase in fair market value of property. Under such circumstances, the Federal income tax regulations expressly provide that in determining the basis for future gain as loss [which is identical with the basis for depreciation], the amount of any liens on the distributed property must be taken into account. § 1.334-2 of such regulations contains the following language:

> "Whether the mortgage indebtedness is assumed by the shareholders or the property is taken subject to the mortgage is immaterial."

Only by the adoption of rules consistent with the foregoing principles, is it possible to avoid the incongruous results of an "equity" theory of depreciation that the Supreme Court described in *Crane, supra.* This is aptly demonstrated by the facts in the instant case. If the petitioners were able to depreciate their equity only, they would be entitled to a maximum deduction of $1,500. (less the portion thereof attributable to land); the indebtedness of nearly $800,000., which could only be repaid with the earnings of the building, would remain in some sort of

state of suspension. In the meantime both physical and economic deterioration would continue without any corresponding deductions to the taxpayers.

Under the decision in the first *Oppenheimer* case, increment in market value is not recognized as part of a liquidating dividend. This brings about consequences similar to a tax-free liquidation under Federal I.R.C. § 333. There is no reason to assume that the Congress when legislating for the District of Columbia intended to decree a forfeiture of all depreciation deductions as a result of tax-free liquidations, when it manifested no such purpose in the Federal tax field. Accordingly, we submit, that this Court should prescribe a rule for depreciating property received in liquidations under District law that would accord the same treatment to liens and encumbrances as is now recognized under comparable Federal law. Such a decision would be consistent with the well-established principle to follow Federal precedent and procedure where no clear expression or policy reason requires a different course. *District of Columbia* v. *ACF Industries, Inc.*, 122 U.S. App. D.C. 12, 350 F. 2d 795 (1965).

## CONCLUSION

For the reasons hereinbefore stated, we submit that the decision of the District of Columbia Tax Court should be reversed.

Respectfully submitted,

NATHAN SINROD
WERNER STRUPP
*Attorneys for Petitioners*
1705 DeSales Street, N. W.
Washington, D. C. 20036

# APPENDIX

IN THE

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 21,573

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JEANNETTE LENKIN, HARRY A. LENKIN and SOPHIE H. LENKIN, trading as LENCSHIRE HOUSE COMPANY, *Petitioners*

v.

DISTRICT OF COLUMBIA, *Respondent*

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**On Petition for Review of a Decision of the District of Columbia Tax Court**

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## JOINT APPENDIX

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DISTRICT OF COLUMBIA TAX COURT

Docket No. 2026

JEANNETTE LENKIN, HARRY A. LENKIN and SOPHIE H. LENKIN, trading as LENCSHIRE HOUSE COMPANY, *Petitioners*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

**Docket**

1967

Feb. 14—Petition filed—Certificate of Service.

Mar. 31—Answer of Respondent—Certificate of Service.

Apr. 3—Hearing set April 24, 1967—Certificate of Service.

Apr. 24—Hearing—Robert E. McCally, Esq. for Respondent.

May 19—Motion To Amend Petition—Motion For Extension Of Time To File Petitioners' Brief—Certificate of Service.

May 23—Motions granted—Certificate of Service.

June 7—Brief On Behalf Of Petitioners—Certificate Of Service.

June 29—Motion For Extension Of Time Within Which To File Brief For Respondent—Certificate of Service.

June 30—Motion granted to August 3—Certificate of Service.

Aug. 2—Motion For Extension Of Time Within Which To File Brief for Respondent—Certificate of Service.

Aug. 9—Motion granted to August 15—Certificate of Service.

Aug. 31—Brief For Respondent—Certificate of Service.

Oct. 11—Findings of Fact and Opinion—Certificate of Service.

Nov. 13—Computation For Entry Of Decision.

Nov. 14—Decision—Certificate of Service.

Dec. 5—Petition For Review Of A Decision Of The District Of Columbia Tax Court—Certificate of Service.

Dec. 12—Designation Of Record On Review—Certificate of Service.

**Petition**

The above-named petitioner appeals from an assessment of taxes against it, and avers as follows:

1. The petitioner is a partnership taxed as an unincorporated business, with principal office at 2424 Pennsylvania Avenue, N.W., Washington, D. C.

2. The taxes in controversy (including assessed interest) are unincorporated franchise taxes for the taxable period ended December 31, 1964 in the amount of $607.90 and for the taxable period ended December 31, 1965 in the amount of $2,071.85, or a total of $2,679.75, of which approximately $2,300.00 is in dispute.

3. The notices of assessment (statement of taxes due) were dated November 17, 1966, as will appear from copies thereof attached hereto as Exhibit 'A'. The notice of deficiency and revision thereof, dated August 29, 1966 and November 17, 1966, respectively, are attached hereto as Exhibit 'B'; the above amounts were paid on December 9, 1966.

4. The assessment of taxes is based upon the following error:

(a) The respondent has erroneously disallowed substantially all depreciation deductions relating to the real property used by the petitioner in its business.

5. The facts upon which the petitioner relies as the basis of this case are as follows:

(a) The petitioner is the owner of real property located in the District of Columbia and known for purposes of taxation as Lot 64 in Square 1923, improved by premises 3140 Wisconsin Avenue, N.W. On March 27, 1964, the petitioner became the owner of the above-mentioned real property by reason of the liquidation of Lencshire House, Inc. which formerly had legal title thereto. Petitioner's members are the former stockholders of said corporation. At the time the corporation was liquidated, the aforementioned property was encumbered by a first deed of trust securing an obligation with an unpaid balance of $795,948.76 (including accrued interest). The distributees of the corporate property acquired the said real property subject to the above-stated indebtedness, which was subsequently paid by them.

(b) The petitioner in filing its franchise tax returns with the respondent computed depreciation on the basis of a fair market value of $966,273.37, of which $884,742.45 was allocated to improvements.

(c) The petitioner contends that in accordance with § 47-1557b(a)(7), D. C. Code (1961), it is entitled to a depreciation deduction of not less than the amount of the indebtedness to which the property was subject, computed by reference to the useful life of said property as of the end of each taxable period involved.

WHEREFORE the petitioner prays that this Court may hear the proceeding and declare the deficiencies assessed as invalid and redetermine the petitioner's tax liability in the manner provided by law.

LENCSHIRE HOUSE COMPANY
By HARRY A. LENKIN

NATHAN SINROD
WERNER STRUPP
Attorneys for Petitioner

)
District of Columbia ) ss:
)

Harry A. Lenkin, being duly sworn, says that he is a partner of the petitioner herein and that he is duly authorized to verify the foregoing petition; that he has read the foregoing petition and is familiar with the statements contained therein, and that he verily believes that said statements are true.

HARRY A. LENKIN

Subscribed and sworn to before me this —— day of February, 1967.

Notary Public, D. C.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
FINANCE OFFICE • Revenue Division

INCOME AND FRANCHISE TAX

STATEMENT

| TYPE TAX | ACCOUNT | REF | TYPE TAX | TAX YEAR | DATE |
|---|---|---|---|---|---|
| I - Individual Income<br>D - Declaration Payment<br>M - Corporation<br>U - Unincorporated Business<br>F - Fiduciary<br>E - Employer Withholding | 62355 | | J | 12/64 | 11/17/66 |

| NAME AND ADDRESS | TOTAL TAX DOLLARS | TOTAL TAX CTS. | CREDIT DOLLARS | CREDIT CTS. | INTEREST TO | PAYMENT DUE DOLLARS | PAYMENT DUE CTS. |
|---|---|---|---|---|---|---|---|
| LEVKIN, Jeanette Et Al<br>Lancashire House Co.<br>2424 Pennsylvania Ave., N.W.<br>Washington, D.C. 20037<br>1,231.45 | 552.64 + | | | | DEC 15'66 | 607.90 | |
| | N 55.26 + | | | | | | |

Interest on payment due at the rate of ½ of 1% per month or portion thereof must be added if not paid on or before the interest date shown on this bill. Late filing penalty is computed at 5% per month or portion thereof (maximum 25%), except type tax E which is a flat 25%.

Make check payable to D. C. TREASURER. Send check or money order to FINANCE OFFICE, REVENUE DIVISION, Municipal Center, Washington 1, D. C.

Your cancelled check is your receipt.

Interest at rate of ½ of 1% per month or portion thereof
from to

TOTAL PAYMENT DUE →

RETURN THIS NOTICE WITH PAYMENT

FP-56 (9/60)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
FINANCE OFFICE • Revenue Division

INCOME AND FRANCHISE TAX

| TYPE TAX | ACCOUNT NUMBER | REF. | TYPE TAX | TAX YEAR | DATE |
|---|---|---|---|---|---|
| I - Individual Income<br>D - Declaration Payment<br>M - Corporation<br>U - Unincorporated Business<br>F - Fiduciary<br>E - Employer Withholding | 62355 | | J | 12/65 | 11/17/66 |

| NAME AND ADDRESS | TOTAL TAX DOLLARS | TOTAL TAX CTS. | CREDIT DOLLARS | CREDIT CTS. | INTEREST TO | PAYMENT DUE DOLLARS | PAYMENT DUE CTS. |
|---|---|---|---|---|---|---|---|
| LEVKIN, Jeanette Et Al<br>Lancashire House Co.<br>2424 Pennsylvania Ave., N.W.<br>Washington, D.C. 20037<br>2,695.40 | 1,992.16 + | | | | DEC 15'66 | 2,071.85 | |
| | N 79.69 + | | | | | | |

Interest on payment due at the rate of ½ of 1% per month or portion thereof must be added if not paid on or before the interest date shown on this bill. Late filing penalty is computed at 5% per month or portion thereof (maximum 25%), except type tax E which is a flat 25%.

Make check payable to D. C. TREASURER. Send check or money order to FINANCE OFFICE, REVENUE DIVISION, Municipal Center, Washington 1, D. C.

Your cancelled check is your receipt.

Interest at rate of ½ of 1% per month or portion thereof
from to

TOTAL PAYMENT DUE →

RETURN THIS NOTICE WITH PAYMENT

FP-56 (9/60)

EXHIBIT 'B'

November 17, 1966

Jeannette Lenkins et al
T/A Lencshire House Company
2424 Pennsylvania Avenue, N.W.
Washington, D. C. 20037

Re: File 62355

Gentlemen:

As the result of a recent conference with Mr. Werner Strupp, our deficiency notice dated August 29, 1966 has been revised in accordance with the attached computation.

This is a final determination under the provisions of Title XII, Section 5 of the District of Columbia Income and Franchise Tax Act of 1947, as amended. Bills for the revised tax deficiency, plus statutory interest, are enclosed.

Very truly yours,

JOHN R. KISSINGER
Supervisory Tax Auditor
Income and Sales Tax Section

JRK/mac
Enclosures
cc: Mr. Werner Strupp

JEANETTE LENKIN, *et al.*
T/A Lencshire House Company
2424 Pa. Ave., N.W., Washington, D. C. 20037

Calendar Years

| | 1964 | | 1965 | |
|---|---|---|---|---|
| Revised net income per our Deficiency Notice dated 8-29-66 | | $17,501.63 | | $48,566.90 |
| Less: Partner's salaries | $2,698.74 | | $3,723.75 | |
| Exemptions | 3,750.00 | 6,448.74 | 5,000.00 | 8,723.75 |
| Net taxable income | | $11,052.89 | | $39,843.15 |
| Tax at 5% | | $ 552.64 | | $ 1,992.16 |
| Less: Tax reported | | —0— | | —0— |
| Deficiency | | $ 552.64 | | $ 1,992.16 |

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL ADMINISTRATION

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

August 29, 1966

Jeannette Lenkin et al
T/A Lencshire House Company
2424 Pennsylvania Avenue, N.W.
Washington, D. C. 20037

Year(s): 1964 and 1965
In re: U/B File No. 62355 (JFO'C)

Gentlemen:

NOTICE OF DEFICIENCY

Examination by this office of your individual income or franchise tax return(s) for the above year(s) indicates a deficiency in tax for each such year, as shown in the accompanying report(s).

IF YOU AGREE to the deficiency (or deficiencies) in tax, the enclosed form of waiver should be executed and forwarded to this office promptly.

IF YOU DO NOT AGREE to the deficiency (or deficiencies) in tax, you may file a written protest within thirty (30) days from the date of this letter stating the grounds for your exceptions. Your protest will be given careful consideration, and, if you so request, an opportunity for a hearing will be granted prior to final determination of any deficiency in tax against you.

IF YOU FAIL to file either the enclosed form of waiver or a written protest within the thirty-day period mentioned, the deficiency (or deficiencies) in tax shown in the accompanying report(s) will become final, and notice and demand for

payment of any additional amounts of tax due will be mailed to you.

Very truly yours,

JOHN R. KISSINGER
Acting Supervisory Tax Auditor
Income and Franchise Tax Section

Enclosures
FR-111 Rev. 11/64)

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JEANETTE LENKIN, *et al.*
T/A Lencshire House Company
2424 Pa. Ave., N.W., Washington, D. C. 20037

| Calendar Years | 1964 | 1965 |
|---|---|---|
| Net Income (Loss) per form D-30 | ($22,437.78) | ($ 2,300.08) |
| Add: Depreciations disallowed | 39,939.41 | 50,866.98 |
| Revised net | $17,501.63 | $48,566.90 |
| Less: Exemption | 3,750.00 | 5,000.00 |
| Revised net taxable income | $13,751.63 | $43,566.90 |
| Tax @ 5%—Deficiency | $ 687.58 | $ 2,178.35 |

There is no provision in the D. C. Income and Franchise Tax Act of 1947, as amended to allow any basis for property received as a dividend. Therefore, depreciation in the amounts indicated is disallowed.

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**Findings of Fact and Opinion**

The petitioners, who conduct an unincorporated business, were assessed a deficiency in franchise tax, measured by net income, which resulted from the disallowance of a deduction from depreciation in real estate operated by the

unincorporated business. The petitioners here appeal from that assessment.

## Findings of Fact

The parties have stipulated the facts, and as stipulated are found by the Court.

## Opinion

The petitioners are partners trading as Lencshire House Company, and as such are engaged as an unincorporated business in the ownership, operation and management of an apartment house in the District of Columbia known as "Lencshire House".

The petitioners formerly were all the stockholders of Lencshire House, Inc., a corporation which owned and operated the aforesaid Lencshire House. In March, 1964, that corporation was dissolved, and its assets, including Lencshire House, were distributed to the three stockholders. Thereupon the petitioners created the above mentioned partnership.

At the time of the dissolution of the Lencshire House, Inc., and of the distribution of its assets to its stockholders the balance sheet of the corporation showing its assets and liabilities was the following: [same as exhibit 4-D of stipulation]

The assets listed under the heading "Fixed Assets" in the foregoing balance sheet comprised Lencshire House and its furniture, furnishings and equipment.

After the distribution by the corporation of its assets the petitioners formed the partnership, trading as Lencshire House Company, which began to operate Lencshire House as an unincorporated business. Some time thereafter a new encumbrance was placed on Lencshire House. In the process of the refinancing, and as a result thereof, the

note of $793,567.90 and interest secured by the mortgage, shown on the balance sheet under the heading "Fixed Liability", were paid or cancelled, and the mortgage was released.

For the purpose of computing their District of Columbia franchise tax liability, and particularly of claiming a deduction for depreciation of the asset Lencshire House, the petitioners estimated that its fair market value was $966,273.37, of which $884,742.45, was allocated to the building. Based on that estimate, the petitioners in their franchise tax return for the period from March 27 to December 31, 1964, claimed a deduction for depreciation of $39,939.41, and for the calendar year, 1965, depreciation of $50,866.98 on Lencshire House. The assessing authority of the District disallowed the claimed deductions in their entirety, and assessed deficiencies in franchise tax as follows: for the period ended December 31, 1964, a deficiency on franchise tax in the amount of $552.64, plus interest in the amount of $55.26, or a total of $607.90; and for the calendar year, 1965, a deficiency in franchise tax in the amount of $1,992.16, plus interest in the amount of $79.69, or a total of $2,071.85. The petitioners here appeal from those assessments.

It should, perhaps, be observed that, notwithstanding Section 47-1551c(m) of the D. C. Code,[1] the petitioners received in the liquidation of Lencshire House, Inc., real estate, which they claim is worth approximately one million dollars, without the payment of, or liability for any income tax thereon. They here now contend that they had the right to step up the basis for depreciation to an amount equal to the mortgage indebtedness on the building.

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[1] (m) The word "dividend" meant any distribution made by a corporation * * * to its stockholders * * * out of its earnings, profits, or surplus (other than paid in surplus), whenever earned by the corporation * * * and whether distributed prior to, during, upon, or after liquidation or dissolution of the corporation * * *.

In *Oppenheimer* v. *District of Columbia*, 92 W.L.R. 799, this Court held that the basis for depreciation of real property distributed by a corporation to its stockholders was not the unrealized value of the property, but was the capital stock investment of the stockholder (called "paid in surplus" in Section 47-1551c(m) of the Code) plus the earned surplus. The validity of the ruling in respect of the capital stock investment was obvious. The inclusion of the earned surplus was due to the fact that, since the stockholder was entitled to the corporation's earned surplus, its inclusion in the property distributed was to the extent of its amount or value an investment by the stockholder. Moreover, the capital stock plus the surplus represented the realized value of the property distributed. The "unrealized" value in contemplation of law was no value at all. For this reason in the first *Oppenheimer* case, 101 U.S. App. D.C. 10, 246 F.2d. 697, it was held that the unrealized value of the property distributed was not a taxable dividend under Section 47-1551c(m) of the Code. As a corollary usable in the second *Oppenheimer*, if, for the purposes of determining the amount of the taxable dividend, unrealized value was not included in the value of the distributed property, it should not be included in valuing the property as a basis for depreciation after the distribution. To put it another way, only the amount invested or the value of that with which the stockholder parted should be the basis of depreciation of the distributed property.

The Tax Court's ruling that only the capital stock investment and the earned surplus was the proper basis for depreciation was affirmed by the United States Court of Appeals in *Oppenheimer* v. District of Columbia,[2] 124 U.S. App. D.C. 221, 363 F.2d. 708, 94 W.L.R. 1281. Therein is found the following:

> "This is not the first time petitioner has been before this court in a tax controversy stemming from

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[2] Sometimes referred to as "Second Oppenheimer".

the corporate dissolution and liquidation involved here. The District contended earlier that petitioner's taxable income for 1953 included the difference between the cost to her of her stock and the market value of the properties received by her in liquidation. This difference was claimed by the District to be a 'dividend' within the meaning of 47 D.C. Code § 1551c(m). However, this court concurred with the Tax Court in rejecting this claim. *District of Columbia* v. *Oppenheimer,* 112 U.S. App. D.C. 239, 301, F.2d. 563 (1962). We noted that an unrealized appreciation in a corporation's assets could not be regarded as a part of its earned surplus; and we reminded that we have held the dividend distributions taxable under § 1551c(m) to be limited to those attributable to earned surplus. See *Berliner* v. *District of Columbia,* 103 U.S. App. D.C. 351, 258 F.2d. 651, *cert. denied,* 357 U.S. 937 (1958). Thus it was that petitioner was held to have received in 1953 taxable income by reason of the liquidation only in the amount of the earned surplus of $135,248.75."

"The Tax Court was of the view in the instant proceeding that Congress could not have intended that petitioner acquire, by virtue of a corporate liquidation, a stepped-up depreciation base largely comprised of an untaxed, because unrealized, rise in market value. Petitioner's argument essentialy is that it is not for the Tax Court to attribute a purpose to Congress at odds with the plain words used by it. It is because we do not find those words quite so compelling as does petitioner that we leave undisturbed the deficiencies asserted by the District in respect of the 1960 and 1961 returns."

• • • • • • • • • • •

"In *Berliner, supra,* it was argued to this Court that a distribution in corporate liquidation should not

be included in taxable income because it represented 'gains from the sale or exchange of (a) capital asset' within the meaning of Section 1551c(1), and was therefore exempt from taxation by reason of Section 1557a(b)(11). We rejected that contention, noting that, at least for purposes of inclusion in taxable income, Congress has in Section 1551c(m), made express provision for distributions in corporate liquidation. Although Congress has, to put it mildly, been appreciably less precise in addressing itself to the depreciation basis of property received in liquidation, we do not think that we are therefore forced to fix such basis by reference to the 'exchange' category set forth in Section 1583e. To do so would be to say that a stockholder, simply by deciding to dissolve and liquidate the corporation, may acquire a depreciation base consisting of a book write-up of a value on which, very properly, no tax need be paid upon its receipt by the stockholder. We think it much more likely that Congress intended to have its express—and only—language in the District taxing statute on corporate distributions in liquidation point the way for handling the depreciation basis of property distributed in liquidation."

The stipulation of the parties and an exhibit thereto (Ex. 4D) shows that the capital stock investment (paid in surplus of the petitioners in Lencshire House, Inc.), was $1,500.00. There was no earned surplus.[3] While it is true that the capital invested by the three stockholders had been dissipated, the amount was actualy paid by them. The Court believes that such amount should be the basis for depreciation.

The petitioners' original contention that the deficiencies here involved were invalid was double-barrelled, that is to say, that it claimed (a) that the basis for depreciation

[3] There was a deficit of surplus of $51,859.52.

should be assumed or estimated market value of the building of Lencshire House, $884,742.45; and (b) that the basis should be the amount of the mortgage and accrued interest thereon in the total amount of $795,948.76. The petitioners have now abandoned the first contention, and rely solely on the second. The Court does not believe for the reasons stated above that either contention is valid.

The petitioners seem to believe that the amount of the mortgage indebtedness was in some way an investment, was what was paid for the property by the three stockholders, or, at least, was such a binding obligation on them that it amounted to some kind or type of payment or consideration. The mortgage was not that of the three stockholders and they were in no way liable therefor. It was the obligation of the corporation alone. Incidently, the claim in the petition that the three stockholders paid the mortgage indebtedness is not born out by the stipulated fact that the indebtedness was settled or paid by refinancing of Lencshire house.

Apparently from the stipulated evidence the mortgage executed by Lencshire House, Inc., permitted that corporation, owned by the petitioner, with $1,500.00 only of capital contributed or paid by them, to acquire in 1949 an apartment house worth over a million dollars; and allowed the stockholders to enjoy the proceeds of its operation over a period of fifteen years.

The Court does not believe that the authorities relied upon by the petitioners are pertinent or helpful in the solution of the question here presented. With exception of *Snow* v. *District of Columbia,* 124 U.S. App. D.C. 69, 361 F.2d. 523, 94 W.L.R. 1281, they relate to situations unlike that under consideration here. The Court agrees with petitioners' counsel that the *Snow* and *Berliner*[4] are irreconcilable. It should be observed in that connection that *Berliner* was cited with approval in *Second Oppenheimer,* which

[4] 103 U.S. App. D.C. 351, 258 F. 2d 651, 86 W.L.R. 456.

was decided several months after *Snow*. Moreover, *Snow* was not even mentioned in *Second Oppenheimer*.

For the reasons stated the Court holds that the proper basis for depreciation of the depreciable portion of Lencshire House is $1,500.00, which represents the capital stock investment of the petitioners in Lencshire House, Inc.

*Decision will be entered under Rule 30.*

Jo. V. MORGAN
Judge

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**Decision**

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing on said petition, it is by the Court this 14th day of November, 1967

ADJUDGED AND DETERMINED, That an unincorporated business franchise tax and interest for the calendar year, 1964, in the total amount of $3.70 was erroneously assessed against, and collected from the petitioners, and that the petitioners are entitled to a refund thereof with interest thereon at the rate of 4 per centum per annum from December 9, 1966, to the date of the payment of the refund.

AND IT IS FURTHER ADJUDGED AND DETERMINED, That an unincorporated business franchise tax and interest for the calendar year 1965, in the total amount of $4.48 was erroneously assessed against, and collected from the petitioners; and that the petitioners are entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from December 9, 1966, to the date of the payment of the refund.

Jo. V. MORGAN
Judge

**Stipulation**

It is hereby stipulated between the District of Columbia and the above-entitled petitioner, by their respective undersigned attorneys, that the following facts shall be taken as true, provided, however, that this stipulation does not waive the right of either party to introduce other evidence not at variance with the facts herein stipulated, or to object to the introduction in evidence of any such facts on the grounds of immateriality or irrelevancy.

1. Lencshire House Company is a partnership, organized on March 27, 1964; its members and their proportionate interests in said partnership are as follows:

| | |
|---|---|
| Jeannette Lenkin | 50% |
| Sophie Lenkin | 33.33% |
| Harry A. Lenkin | 16.67% |

2. On March 27, 1964, the individuals named in paragraph 1 hereof became the distributees of all of the assets, subject to all of the liabilities, of Lencshire House, Inc., a Maryland corporation.

3. Lencshire House, Inc. was organized on March 21, 1949 and had operated in the District of Columbia since that time, with its principal asset being an apartment house located on Lot 64 in Square 1923, improved by premises 3140 Wisconsin Avenue, N. W. The individuals referred to in paragraph 1 hereof owned capital stock in Lencshire House, Inc. in the same proportions as are represented by the present interests in the partnership.

4. On March 4, 1964, the directors of Lencshire House, Inc. recommended a plan of liquidation to the stockholders of said corporation. Copies of the minutes of the meeting of directors and of the plan of liquidation are attached and marked Exhibits 1-A and 2-B, respectively. On March 9, 1964, the stockholders approved the plan of liquidation and directed that it be implemented. A copy of the minutes

of the meeting of stockholders of said corporation is attached hereto and marked Exhibit 3-C.

5. The real property referred to in paragraph 3 hereof was conveyed on March 27, 1964 by Lencshire House, Inc., as grantor, to Jeannette Lenkin, Harry A. Lenkin and Sophie Lenkin, grantees, as tenants in common.

6. The aforesaid real property at the time of conveyance was encumbered by a first deed of trust securing a promissory note with an unpaid balance of $795,948.76 (including accrued interest); a copy of the balance sheet of Lencshire House, Inc. as of March 27, 1964 is attached hereto and marked Exhibit 4-D.

7. Subsequent to the said corporate liquidation referred to herein, the promissory note mentioned in paragraph 6 hereof was paid in full as part of a refinancing.

8. The petitioner in filing its franchise tax returns with the respondent commencing with the taxable period ended December 31, 1964, based its depreciation deductions on a fair market value of $966,273.37 of which $884,742.45 was allocated to improvements.

9. With respect to the improvements to real property received by the members of the petitioner in the aforesaid corporate liquidation, petitioner claimed the following deductions for depreciation for the taxable periods indicated:

| | |
|---|---|
| December 31, 1964 | $39,939.41 |
| December 31, 1965 | 50,866.98 |

The respondent disallowed the entire amount of said deductions.

10. The respondent assessed deficiencies in franchise taxes for the taxable period ended December 31, 1964 in the amount of $552.64 and December 31, 1965 in the amount of $1,992.16 (each of such amounts being exclusive of statutory interest).

11. Franchise tax returns, forms D-30, (or copies thereof), for the taxable periods involved are attached hereto and are marked Exhibit 5-E (December 31, 1964) and 6-F (December 31, 1965).

Attorney for Petitioner
Corporation Counsel, D. C.
Assistant Corporation Counsel, D. C.

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EXHIBIT 1-A

SPECIAL MEETING OF THE BOARD OF DIRECTORS

OF

LENCSHIRE HOUSE, INC.

A special meeting of the Board of Directors of Lencshire House, Inc., was held at the offices of the Company on March 4, 1964 at 2:00 P.M.

Those present were Harry A. Lenkin, Melvin Lenkin, Sophie H. Lenkin and Jeannette Lenkin, constituting the entire Board. Mr. Harry A. Lenkin acted as chairman of the meeting and Mr. Melvin Lenkin acted as Secretary.

The chairman reported that previous discussions concerning a possible liquidation of this Corporation had culminated in a concrete plan of liquidation. Under such plan all of the property of the Corporation would be distributed to the stockholders pro rata, subject to any liabilities. Thereafter, the former stockholders would own and operate the real property known as "Lencshire House Apartments" in their individual capacities as members of a joint venture. The secretary read the formal Plan, a copy of which is attached hereto.

Upon motion duly made, seconded and adopted, it was

RESOLVED, that the Plan of Liquidation of Lencshire House, Inc. attached hereto, calling for the final liquidation of Lencshire House, Inc., pursuant to Section 333 of the Internal Revenue Code is hereby recommended for adoption by the stockholders with the further recommendation that the Plan be carried out during the month of March, 1964.

There being no further business to come before the Board, upon motion duly made, seconded and adopted, the meeting was adjourned.

Secretary of Meeting

We, the undersigned, being all the Directors of Lencshire House, Inc., hereby waive notice of the time, place and purpose of a special meeting of the Board of Directors of Lencshire House, Inc. We designated March 4, 1964 at 2:00 P.M. as the time, 2424 Pennsylvania Avenue, N.W., as the place and consideration of the liquidation of said corporation as the purpose of such meeting. The foregoing minutes are hereby expressly approved and ratified.

HARRY A. LENKIN
MELVIN LENKIN
SOPHIE H. LENKIN
JEANNETTE LENKIN

Dated: March 4, 1964

---

EXHIBIT 2-B

PLAN OF LIQUIDATION
OF
LENCSHIRE HOUSE, INC.

This Plan of complete Liquidation and Dissolution, hereinafter called the Plan, is for the purpose of effecting the complete liquidation and dissolution of Lencshire House,

Inc., hereinafter called the Corporation, in accordance with Section 333 of the Internal Revenue Code and the laws of the State of Maryland.

1. The Plan is hereby submitted to the present stockholders of the Cooperation for adoption at a meeting to be held on March 9, 1964 for that purpose. The Plan shall become effective upon its adoption at such meeting by the affirmative votes of the holders of two-thirds of the outstanding shares of the stock of the Corporation.

2. On or before March 31, 1964, the Corporation shall distribute all of its property in liquidation by: (a) Executing and delivering to Harry A. Lenkin, Sophie H. Lenkin and Jeannette Lenkin a deed conveying to them as tenants in common the real property at 3140 Wisconsin Avenue, N.W., Washington, D. C. known for purposes of taxation as Lot 64 in Square 923. Said tenants in common shall acquire the aforesaid property with the improvements thereon, subject to all mortgages, covenants, restrictions and all other encumbrances existing as of the date of transfer. The said conveyance shall vest ownership in the grantees in the same proportions as is presently represented by their respective stock ownerships, to wit:

| | |
|---|---|
| Harry A. Lenkin | 16 2/3% |
| Sophie H. Lenkin | 33 1/3% |
| Jeannette Lenkin | 50% |

(b) Transferring and assigning to the persons mentioned in paragraph 2(a) all other assets now owned by the Corporation, in the same proportions as their present stock ownership.

3. From and after the date of the transfers referred to in paragraph 2, the Corporation shall not engage in any business activities. The directors then in office shall continue in office solely for the purpose of winding up the business and affairs of the Corporation, and after such

date shall take no action whatsoever which is, or which can be construed to be, inconsistent with the status of liquidation, and such status shall be continued until the date of the dissolution of the Corporation.

4. Promptly after the date of the transfers referred to in paragraph 2, the directors and officers shall execute and cause to be filed, articles of dissolution of the Corporation in accordance with the laws of the State of Maryland.

In addition to the execution and filing of the final income tax and franchise tax returns of the Corporation, the directors and officers shall in due time execute and file Treasury Department Form 966, and Forms 1096 and 1099L, together with the additional information required by the applicable regulations, and all other returns, documents, and information required to be filed by reason of the complete liquidation of the Corporation.

5. The directors and officers of the Corporation shall carry out and consummate the Plan, and shall have power to adopt all resolutions, execute all documents, and file all papers, and take all other action they deem necessary or desirable for the purpose of effecting the dissolution of the Corporation and the complete liquidation of its business, assets, and affairs, but nothing herein shall be construed to permit the directors or officers to take any action which would be inconsistent with the provisions of Section 333 of the Internal Revenue Code or the regulation thereunder, or which which prevent any stockholder of the Corporation from filing an election to be governed by the provisions of that section.

EXHIBIT 3-C

SPECIAL MEETING OF THE STOCKHOLDERS
OF
LENCSHIRE HOUSE, INC.

A special meeting of the Stockholders of Lencshire House, Inc. was held on March 9, 1964 at 2:00 P.M., at 2424 Pennsylvania Avenue, N. W., Washington, D. C. Those present were:

| | |
|---|---|
| Jeanette Lenkin | 150 Shares |
| Harry A. Lenkin | 50 Shares |
| Sophie H. Lenkin | 100 Shares |

constituting all of the owners of common stock. Mr. Lenkin acted as chairman of the meeting and Mrs. Jeanette Lenkin acted as Secretary.

The chairman reported that at a meeting of the Board of Directors of this Corporation, held on March 4, 1964, a resolution had been adopted recommending the liquidation of the Corporation in accordance with Section 333 of the Internal Revenue Code. He then read the resolution and the Plan of Liquidation.

Upon motion duly made, seconded and adopted, the Stockholders unanimously approved the Plan of Liquidation and directed that it be made a part of these minutes.

Upon motion duly made, seconded and adopted, the Directors of the Corporation were instructed to proceed with all necessary steps to implement and carry out the plan of liquidation.

There being no further business to come before the meeting, upon motion made, seconded and adopted, the said meeting was adjourned.

Secretary of Meeting

We, the undersigned, being all of the owners of the outstanding common stock of Lencshire House, Inc. do hereby waive notice of the time, place and purpose of a special meeting of Stockholders of said Corporation. We designate March 4, 1964 at 2:00 P.M. as the time, 2424 Pennsylvania Avenue, N. W., Washington, D. C. as the place and consideration of the liquidation of Lencshire House, Inc. as the purpose of such meeting. The foregoing minutes are hereby expressly approved and ratified.

JEANETTTE LENKIN
HARRY LENKIN
SOPHIE H. LENKIN

EXHIBIT #1 4-D

Lancshire Homes, Inc.

Balance Sheet as of March 27, 1964

ASSETS

| | | | | |
|---|---|---|---|---|
| Current Assets: | | | | |
| Cash in Office | | | $ 50.00 | |
| Cash in Bank | | | 18,728.11 | |
| Reserve for Replacements | | | 61,353.35 | |
| Mortgage Escrow Deposits | | | 7,324.80 | |
| Total Current Assets | | | | 87,556.26 |
| Prepaid Taxes | | | | 4,938.92 |
| Fixed Assets: | Cost | Depreciation Reserve | Net | |
| Land | 42,529.04 | | 42,529.04 | |
| Bldg. & Bldg. Equip.-Fixed | 1,047,228.25 | 425,959.21 | 621,269.04 | |
| Building Equipment-Portable | 22,545.81 | 22,172.55 | 373.26 | |
| Furniture | 4,185.28 | 4,185.28 | -0- | |
| Furnishings | 8,911.93 | 8,911.93 | -0- | |
| Maintenance Equipment | 866.32 | 640.53 | 225.79 | |
| Total Fixed Assets | 1,126,266.63 | 461,869.50 | 664,397.13 | 664,397.13 |
| Total Assets | | | | $ 756,892.31 |

LIABILITIES

| | | | | |
|---|---|---|---|---|
| Current Liabilities: | | | | |
| Accounts Payable and Accrued Liabilities | | | 7,535.34 | |
| Accrued D. C. Income Taxes | | | 762.76 | |
| Accrued Federal Income Taxes | | | 4,454.97 | |
| Accrued Liquidation Expenses | | | 50.00 | |
| Total Current Liabilities | | | | 12,803.07 |
| Fixed Liabilities: | | | | |
| Mortgage Payable | | | 793,567.90 | |
| Accrued Interest on Mortgage | | | 2,380.86 | |
| Total Fixed Liabilities | | | | 795,948.76 |
| Total Liabilities | | | | $ 808,751.83 |
| Net Worth: | | | | |
| Capital Stock - Common | | | 1,500.00 | |
| Deficit - June 1, 1963 | | (64,997.78) | | |
| Profit for period ended 3-27-64 | | 11,638.26 | (53,359.52) | |
| Net Deficit | | | | (51,859.52) |
| Total Liabilities and Net Deficit | | | | $ 756,892.31 |

PAGE 1 — FIRST RETURN — EXHIBIT S-E

NOT TO BE FILLED IN BY TAXPAYER
Audited . . . . 19..
By . . . . .
Additional Information Requested
Delinquency Notice $ . . . . .
Refund Recommended $ . . . . .

# FORM D-30
## DISTRICT OF COLUMBIA
# Unincorporated Business Franchise Tax Return For Calendar Year 1964

or fiscal year begun . . . . . , 19. . . . . , and ended . . . . . 19. . . . .

ENTER YOUR D.C. IDENTIFICATION NO. HERE ⇒

ENTER YOUR FEDERAL EMPLOYER IDENTIFICATION NUMBER: 52 0361757

Return to be made by a Taxpayer having a Gross Income of more than $5,000.00, whether or not such taxpayer has a net income.

Trade Name: LENGSHIRE HOUSE COMPANY
Name of Member(s): Jeannette Lenkin, Harry A. Lenkin & Sophie Lenkin
Mailing Address: 2424 Pennsylvania Avenue, N.W. (Street and Number) Washington (City) D.C. (State) 20037 (Zip Code)

• ATTACH CHECK OR MONEY ORDER HERE •

| READ INSTRUCTION SHEET BEFORE PREPARING RETURN | 1 TOTAL BUSINESS FIGURES | 2 ITEMS TO BE ALLOCATED WITHIN D.C. | 3 ITEMS TO BE ALLOCATED WITHOUT D.C. |
|---|---|---|---|
| GROSS INCOME | | | |
| 1. Gross Receipts, less returns and allowances | | | |
| 2. Less: Cost of Goods Sold (Sch. A) and/or operations (Attach Schedule) | | | |
| 3. Gross Profit | | | |
| 4. Dividends (Attach Schedule) | | | |
| 5. Interest (Attach Schedule) | | | |
| 6. Gross Rental Income (Sch. B, Col. 3) | 124,937.15 | | |
| 7. Royalties (Attach Schedule) | | | |
| 8. Net Gain (Loss) from Sales or Exchanges of Non-Capital Assets (Sch. C) | | | |
| 9. Other Income (Attach Schedule) | 1478.28 | | |
| 10. Total Gross Income | 136,415.43 | | |
| DEDUCTIONS | | | |
| 11. Rental Expenses, related to Rental Income (Sch. B, Col. 6) | 159,253.21 | | |
| 12. Salaries and Wages (do not include owners) | | | |
| 13. Rent | | | |
| 14. Interest (Sch. E) | | | |
| 15. Taxes (Sch. F) | | | |
| 16. Losses in this business (Attach Schedule) | | | |
| 17. Bad Debts (Sch. G) | | | |
| 18. Repairs (Attach Schedule) | | | |
| 19. Depreciation (Sch. H) | | | |
| 20. Contributions (Sch. I) | | | |
| 21. Other Deductions (Sch. J) | | | |
| 22. Total Deductions | 159,253.21 | | |
| 23. Net Income (line 10 less line 22) LOSS | (22,837.78) | | |

### FRANCHISE TAX COMPUTATION

**TAXABLE INCOME**

| | | |
|---|---|---|
| 24. Net income from Trade or Business subject to apportionment (Line 23, Col. 1 Less sum of amounts on Line 23, Cols. 2 and 3) | | $ |
| 25. X D.C. Apportionment Factor (from Line 40 below) | | |
| 26. Net income from Trade or Business apportioned to the District | | $ |
| 27. Add: Net income from items allocated to the District, Line 23, Column 2 | | |
| 28. Total District Net ~~Income~~ Loss | | $ (22,837.78) |
| 29. Less: Salary for Taxpayer(s) services (Sch. M, Line 6, Col. 4) | $ -0- | |
| 30. Exemption (Sch. M, Line 6, Col. 5) | -0- | |
| 31. Total Taxable Income | LOSS | $ (22,837.78) |

**TAX** — Total amount due

| | |
|---|---|
| 32. Tax (Five per cent of line 31) (PAY IN FULL WITH THIS RETURN) | $ NONE |
| 33. Penalty for late filing (See General Instruction G) % | |
| 34. Interest for late payment (See General Instruction G) from to | |
| 35. Total tax, penalty and interest | $ |
| 36. Less: Tax paid, if any, with application for extension of time in which to file | |
| 37. Payment submitted herewith | $ NONE |

**APPORTIONMENT FACTOR**

| | |
|---|---|
| 38. Numerator of apportionment factor (from Line 5, Col. 1, Sch. N) | $ |
| 39. Denominator of apportionment factor (from Line 5, Col. 2, Sch. N) | $ |
| 40. District of Columbia apportionment factor (Line 38 divided by Line 39. Factor carried to six (6) decimal places) | |

I declare under the penalties provided by law that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

SINROD & TASH, CPA's Washington, D.C. (Business address and name (other than taxpayer) preparing return) — 2/20/65 (Date) — (Signature of taxpayer) — (Date)

**Mailing Instructions:** Make check payable to the D.C. Treasurer for the Total Tax. Mail this return and remittance to the FINANCE OFFICE, Revenue Division, Municipal Center, 300 Indiana Avenue, N.W., Washington, D.C. 20001, on or before the 15th day of the fourth month following the close of the taxable year.

**Schedule A.—COST OF GOODS SOLD.** (See Specific Instruction 2)
(Where inventories are an income determining factor)

| | |
|---|---|
| 1. Inventory at beginning of year | |
| 2. Merchandise bought for manufacture or sale | |
| 3. Salaries and wages | |
| 4. Other costs per books (attach schedule) | |
| 5. Total | |
| 6. Less: Inventory at end of year | |
| 7. Cost of goods sold (enter here and on line 2, page 1) | |

1. Was inventory valued at—Cost ☐; lower of cost or market ☐; LIFO ☐; other ☐? If other, attach explanation.
2. Have write-downs been made to inventory? Yes ☐ No ☐. If "Yes," were the write-downs computed on the basis of:
   (a) ☐ Percentage reductions from parts of the inventory
   (b) ☐ Percentage reductions from the total inventory
   (c) ☐ Valuation of individual items.
   If "a" or "b" is checked, enter the percentage of write-downs _____%. For "a," "b," or "c" enter the dollar amount of write-downs $_____ (If not available, estimate and indicate that the figure is an estimate.)
3. Was the inventory verified by physical count during the year? Yes ☐ No ☐. If "No," attach explanation of how the closing inventory was determined.
4. Was there any substantial change in the manner of determining quantities, costs or valuations between the opening and closing inventories? Yes ☐ No ☐. If "Yes," attach explanation.

NOTE: If a direct answer cannot be given to a question, attach explanation.

**SCHEDULE B.—INCOME FROM RENT** (See Specific Instructions)

| 1. Address of property | 2. Kind of property | 3. Amount of rent | 4. Depreciation or Depletion (Explain in Sch. II) | 5. Repairs (Explain below) | 6. Taxes, Interest and other expenses (Explain below) |
|---|---|---|---|---|---|
| 1. 3140 Wisconsin Ave., N.W. | Apt. Building | $ | $ | $ | $ |
| 2. | | | | | |
| 3. | | | | | |
| 4. | | | | | |
| 5. | | | | | |
| 6. | | | | | |
| 7. See Schedule Attached | | | | | $ 111429.92 |
| 8. Totals (Enter total of Col. 3 as line 6, Page 1) | | $ 134,927.15 | $ 39,939.41 | $ 7884.08 | |
| 9. Total of Cols. 4, 5 and 6 (Enter as line 11, Page 1) | | | | | $ 159,253.21 |

**Explanation of deductions claimed in Columns 5 and 6 above.**

| 1. Col. No. | 2. Explanation | 3. Amount | 1. Col. No. | 2. Explanation | 3. Amount |
|---|---|---|---|---|---|
| | | $ | | | $ |
| | | | | | |
| | | | | | |
| | | | | | |

**Schedule C.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF NON-CAPITAL ASSETS** (See Specific Instruction 8)

| 1. Description of Property Held for Two Years or Less | 2. Date Acquired Mo. Day Yr. | 3. Date Sold or Exchanged Mo. Day Yr. | 4. Gross Sales Price | 5. Depreciation Allowed (or Allowable) Since Acquisition (Furnish Details) | 6. Cost or Other Basis * | 7. Expense of Sale and Cost of Improvements Subsequent to Acquisition | 8. Gain or Loss (subtract 6 plus column 7 minus the sum of columns 5 and 7) |
|---|---|---|---|---|---|---|---|
| | | | $ | $ | $ | $ | $ |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | $ |

Total Net Gain (or Loss) (enter as line 8, page 1) _____
* Explain basis unless cost is used _____
State how property was acquired _____

**Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS** (See Specific Instruction 9)

| 1. Description of Property Held for More Than Two Years | 2. Date Acquired Mo. Day Yr. | 3. Date Sold or Exchanged Mo. Day Yr. | 4. Gross Sales Price | 5. Depreciation Allowed (or Allowable) Since Acquisition (Furnish Details) | 6. Cost or Other Basis | 7. Expense of Sale and Cost of Improvements Subsequent to Acquisition | 8. Gain or Loss (subtract 6 plus column 7 from 4 minus the sum of columns 5 and 7) |
|---|---|---|---|---|---|---|---|
| | | | $ | $ | $ | $ | $ |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | $ |

Total Net Gain or Loss omitted in the computation of net income _____
State how property was acquired _____
See Specific Instruction 8, for even though such assets were held for more than two years, they may not be considered "Capital Assets" in certain cases.

**Schedule E.—INTEREST EXPENSE** (See Specific Instruction 14)

| Name and Address of Payee | Amount | Name and Address of Payee | Amount |
|---|---|---|---|
| | $ | | $ |

Total (Enter as line 14, page 1, that portion of the total not included in Schedule B) _____ $

**Schedule F.—TAXES** (See Specific Instruction 15)

| Nature | Amount | Nature | Amount |
|---|---|---|---|
| | $ | | $ |
| | | | |
| | | | |

Total (Enter as line 15, page 1, that portion of the total not included in Schedule B) _____ $

**Schedule G.—BAD DEBTS** (See Specific Instruction 17)

| 1. Taxable Year | Amount of Notes and Accounts Receivable Outstanding at— 2. Beginning of Year | 2. End of Year | 4. Net Income Reported | 5. Sales on Account | 6. Bad Debts Charged Off if No Reserve Is Carried on Books | If A Reserve Is Carried: 7. Gross Amount Added to Reserve | 8. Amount Charged Against Reserve |
|---|---|---|---|---|---|---|---|
| 1960 | $ | $ | $ | $ | $ | $ | $ |
| 1961 | | | | | | | |
| 1962 | | | | | | | |
| 1963 | | | | | | | |
| 1964 | | | | | | | |

Check whether deduction claimed represents debts which have become worthless ☐, or is an addition to a reserve ☐

1065-ST

Form No 5104

TAXPAYER: LENGSHIRE HOUSE COMPANY
ADDRESS: c/- Lenkin Realty Co.
2424 Pennsylvania Ave., N.W., Washington, D.C.

Employer Identification Number: 52-0801757

STATEMENT OF RENTAL OPERATIONS FOR THE PERIOD

BEGINNING 3/27/64 THRU 12/31/64

| | | | |
|---|---|---|---|
| RENTAL INCOME | $ 134737 15 | | |
| Plus: Current Advance Rents Coll. | - | $ | |
| Less: Prior Advance Rents Reported | | - | |
| TAXABLE RENTAL INCOME | | | $ 134737 15 |
| EXPENSES: Depreciation | | $ 30[illegible]21 | |
| Repairs: General | $ 2[illegible]85 | | |
| Decorating | 2[illegible]69 | | |
| Exmr & Trash Removal | 3[illegible]00 | | |
| Elevator | 1[illegible]80 | | |
| Air Conditioning | 1[illegible]54 | | |
| | | $ 7[illegible]48 | |
| Other: Fee to Mgt. Agent | $ 4[illegible]92 | | |
| Electicity and Gas | 1[illegible]11 | | |
| Fuel | 2[illegible]27 | | |
| Advertising | 21 31 | | |
| Insurance | 1[illegible]69 | | |
| Interest | 5[illegible]86 | | |
| Legal and Audit | 4[illegible]00 | | |
| Amortization- Financing | 9[illegible]64 | | |
| Miscellaneous | 1[illegible]94 | | |
| Salaries | 8[illegible]18 | | |
| Supplies | 3[illegible]1 | | |
| Taxes-Payroll, Genl., Etc. | 2[illegible]16 | | |
| Taxes - Real Estate | 15[illegible]97 | | |
| Water | 1[illegible]54 | | |
| Telephone | 1[illegible]71 | $ 1[illegible]32 | 15[illegible]21 |
| NET INCOME (LOSS) BEFORE OTHER INCOME | | | $ (2[illegible]06) |
| Add: Other Income - Wash. Mach. Commissions | | $ | 18[illegible]21 |
| NET INCOME (LOSS) FOR THE PERIOD | | | $ (22[illegible]78) |

## Schedule H.—DEPRECIATION (See Specific Instruction 18)

| 1. Kind of property (If buildings, state material of which constructed). Include land and other nondepreciable property | 2. Date acquired | 3. Cost or other basis | 4. Depreciation allowed (or allowable) in prior years | 5. Method of computing depreciation | 6. Rate (%) or life (years) | 7. Depreciation for the year |
|---|---|---|---|---|---|---|
| Building | 3/27/64 | $ | $ | | | $ 1,458.41 |
| Building Equipment | 3/27/64 | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| Total | | | | | | $ 30,92 .41 |

(Enter as line 19, page 1, that portion of the total not included in Schedule B) $

Explain basis unless cost is used Fair Market Value

## Schedule I.—CONTRIBUTIONS OR GIFTS PAID (See Specific Instruction 20)

| Name and Address of Organization | Amount | Name and Address of Organization | Amount |
|---|---|---|---|
| | $ | | $ |
| | | | |
| | | | |
| Total (Enter as line 20, page 1, subject to 15 per cent limitation) | | | $ |

## SCHEDULE J.—OTHER DEDUCTIONS (See Specific Instruction 21)

| | | | |
|---|---|---|---|
| | $ | | $ |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| Total (Enter as line 21, page 1) | | | $ |

## Schedule K.—BALANCE SHEETS (See Specific Instruction—Schedule K)

| ASSETS | Beginning of Taxable Year Amount | Beginning of Taxable Year Total | End of Taxable Year Amount | End of Taxable Year Total |
|---|---|---|---|---|
| 1. Cash | | | | 502 |
| 2. Notes and accounts receivable | | | | 6,273.24 |
| Less: Reserve for bad debts | | | | |
| 3. Inventories: | | | | |
| (a) Other than last-in, first-out | | | | |
| (b) Last-in, first-out | | | | |
| 4. Investments in Government obligations | | | | |
| 5. Other current assets—including short term marketable investments (Attach schedule) PREPAID EXPENSES | | | | 10,969.36 |
| 6. Other investments (Attach schedule) | | | 184,742.45 | |
| 7. Buildings and other fixed depreciable assets | | | 39,939.41 | 9,803.04 |
| Less: Accumulated amortization and depreciation | | | | |
| 8. Depletable assets | | | | 31,330.92 |
| Less: Accumulated depletion | | | 11,938.50 | |
| 9. Land (Net of any amortization) | | | 394.64 | 1,443.86 |
| 10. Intangible assets (Amortizable only) | | | | |
| Less: Accumulated amortization | | | | 9,272.42 |
| 11. Other assets (Attach schedule) | | | | |
| 12. Total Assets | | | | 2207.28 |
| **LIABILITIES AND CAPITAL** | | | | |
| 13. Accounts payable | | | | |
| 14. Mortgages, notes, and loans payable (short term): | | | | |
| (a) Banks | | | | 5701.59 |
| (b) Others | | | | |
| 15. Other current liabilities (Attach schedule) ACCRUED TAXES & INTEREST | | | | |
| 16. Mortgages, notes, and loans payable (long term): | | | | 999,251.85 |
| (a) Banks | | | | |
| (b) Others | | | | (40,690.30) |
| 17. Other liabilities (Attach schedule) | | | | 955,070.42 |
| 18. Partners' capital accounts | | | | |
| 18. Total Liabilities and Capital | | | | |

## Schedule L.—LIST INCOME NOT REPORTED HEREIN BECAUSE CLAIMED NONTAXABLE

(Other than Capital Gains Reported in Schedule D) (See Specific Instruction—Schedule L)

| 1. Nature of income | 2. Amount | 3. Nature of income | 4. Amount |
|---|---|---|---|
| | $ | | $ |
| | | | |

Schedule M.—DISTRIBUTION AND RECONCILIATION OF NET INCOME OR LOSS (See Specific Instructions 29 and 30)

| 1. Name and Address of Owner(s) | Enter Social Security No. | 2. Percentage of time devoted to this business | 3. Percentage of ownership | Owner's share(s) of— 4. Salary claimed (a) | 5. Exemption claimed (b) | 6. Net loss, if any, D.C. sources (c) | 7. Net income (or loss) from without D.C. (d) | 8. Total income (or loss) as it relates to the unincorporated business (e) |
|---|---|---|---|---|---|---|---|---|
| 1. Jeannette Lenkin Washington, D.C. | 051-03-2068 | Yes | 50% | $ | $ | $(11,218.57) | $ | $(11,218.57) |
| 2. Harry A. Lenkin Washington, D.C. | 578-05-8523 | Yes | 16.67% | | | (2739.43) | | (373.08) |
| 3. Sophie Lenkin Washington, D.C. | 578-40-2120 | Yes | 33.33% | | | (7479.14) | | (747.26) |
| 4. | | | | | | | | |
| 5. | | | | | | | | |
| 6. TOTALS | | | | (a) $ | (b) $ | (c) $(21,437.14) | (d) $ | (e) $(22,437.14) |

Add amount of income taxed to Unincorporated Business (Line 31, page 1) ..... $ -0-

Total income of Unincorporated Business from within and without the District (Line 32, page 1, col. 1) ..... $(22,437.14)

(a) See Specific Instruction—29

(b) See Specific Instruction—30

(c) From line 28, Page 1

(d) Difference between line 23, column 1, page 1, and line 28, Page 1.

(e) To be reported by District residents in Schedule "F," Page 4, Form D-40.

Schedule N.—ITEMS INCLUDABLE IN D.C. APPORTIONMENT FACTOR (See Specific Instruction for Schedule N)

Check appropriate apportionment formula used:

1. District sales to total sales ☐
2. District charges to total charges ☐
3. District costs to total costs ☐
4. District sales and charges to total sales and charges ☐
5. District sales and costs to total sales and costs ☐
6. District gross income to total gross income ☐

COMPLETE COLUMNS 1 AND 2 FOR EACH LINE: IF NONE, WRITE "NONE"

| Line | | COLUMN 1 | Line | | COLUMN 2 |
|---|---|---|---|---|---|
| 1. | (a) Amount of sales to "District customers" $ | | | | |
| | (b) Amount of sales to "customers outside the District" $ | | | | |
| | Total District sales (line 1(a) plus line 1(b)) | | 1. | Total sales everywhere | |
| 2. | Amount of charges for work done or services performed within the District | | 2. | Total amount of charges for work done or services performed everywhere | |
| 3. | Amount of costs of work done or services performed in the District, including overhead * | | 3. | Total amount of costs of work done or services performed everywhere, including overhead * | |
| 4. | Amount of District gross income (Applicable only to businesses other than (1) those selling tangible personal property and (2) those doing work or performing services in the District) | | 4. | Amount of total gross income everywhere (Applicable only to businesses other than (1) those selling tangible personal property and (2) those doing work or performing services in the District) | |
| 5. | Enter total here and on line 38, page 1 | | 5. | Enter total here and on line 39, page 1 | |

* Attach a detailed list of costs.

Schedule O.—SUPPLEMENTAL INFORMATION (See Specific Instructions—Schedule O)
(Answers must be furnished to the following questions)

1. Date business was begun March 22, 1964
2. Nature of principal business activity Rental of Property
3. If this business has terminated, give date of termination
   State how terminated
4. Nature of ownership of business Partnership
   (Sole proprietorship, partnership, syndicate, pool, joint venture, etc.)
5. State place where Federal Income Tax Return was filed for the period covered by this return Baltimore
6. State name or names under which Federal Income Tax Return was filed for the period covered by this return
   same
7. Is this return made on the accrual basis? Yes If not, describe basis used
8. Did you file a franchise tax return for this business with the District of Columbia for the year 1963? No If so, state name under which the return was filed
   If not, state reasons for not filing First Return,
9. Has the Internal Revenue Service made or proposed any adjustment in the Federal Income Tax Returns filed by you for this business or have amended returns been filed with the Internal Revenue Service for this business by you for any of the years 1961? No 1962? No 1963? No
   Attach a detailed statement explaining such adjustments, or give date if previously submitted
10. Does the return include the income from more than one business conducted by the taxpayer? No If so, list the business(es) below, and the net income as to each:
11. Is the income of any other business owned by, or in which the proprietor or proprietors of this business have an interest, reported in a separate return? Yes If so, list name(s) and address(es) of such other business(es) below:
    various
12. Is this business an adjunct of a corporation, or affiliated with any corporation? No If so, explain affiliation as to stockholders and proprietors:
13. Number of places of business in D. C. One; number without D.C. None
14. Have you filed annual Information Return Forms D-96 and D-99 pertaining to compensation payments for 1964? No
15. If the income reported herein is different from that reported to the Internal Revenue Service, attach a schedule of reconciliation.
16. Did you withhold D.C. income tax from the wages of your employees during 1964? ☒ Yes ☐ No If not, state reason

EXHIBIT 6-F

PAGE 1 ENTER YOUR D. C. BUSINESS TAX REGISTRATION NUMBER ○ ○ ○

NOT TO BE FILLED IN BY TAXPAYER
Audited ..... 19..
By .....
Additional Information Requested .....
Delinquency Notice $ .....
Refund Recommended $.....

FORM D-30
DISTRICT OF COLUMBIA
# Unincorporated Business Franchise Tax Return For Calendar Year 1965
or fiscal year begun....., 19....., and ended....., 19.....

D.C. BUSINESS TAX REGISTRATION NO.
62355
ENTER YOUR FEDERAL EMPLOYER IDENTIFICATION NUMBER
5 2 0 8 0 1 7 5 2

Return to be made by a Taxpayer having a Gross Income of more than $5,000.00, whether or not such taxpayer has a net income.

Trade Name LENCSHIRE HOUSE COMPANY
Name of Member(s) Jeannette Lenkin, Harry A. Lenkin & Sophie Lenkin

Mailing Address 2424 Pennsylvania Avenue, N.W. (Street and Number) (City) Washington, D.C. (State) 20037 (Zip Code)

ATTACH CHECK OR MONEY ORDER HERE

| READ INSTRUCTION SHEET BEFORE PREPARING RETURN | 1 TOTAL BUSINESS FIGURES | 2 ITEMS TO BE ALLOCATED WITHIN D.C. | 3 ITEMS TO BE ALLOCATED WITHOUT D.C. |
|---|---|---|---|
| GROSS INCOME | | | |
| 1. Gross Receipts, less returns and allowances | | | |
| 2. Less: Cost of Goods Sold (Sch. A) and/or operations (Attach Schedule) | | | |
| 3. Gross Profit | | | |
| 4. Dividends (Attach Schedule) | | | |
| 5. Interest (Attach Schedule) | | | |
| 6. Gross Rental Income (Sch. B, Col. 3) | 186,187.40 | | |
| 7. Royalties (Attach Schedule) | | | |
| 8. Net Gain (Loss) from Sales or Exchanges of Non-Capital Assets (Sch. C) | | | |
| 9. Other Income (Attach Schedule) | 2,732.23 | | |
| 10. Total Gross Income | 188,919.63 | | |
| DEDUCTIONS | | | |
| 11. Rental Expenses related to Rental Income (Sch. B, Col. 6) | 191,219.71 | | |
| 12. Salaries and Wages (do not include owners) | | | |
| 13. Rent | | | |
| 14. Interest (Sch. E) | | | |
| 15. Taxes (Sch. F) | | | |
| 16. Losses in this business (Attach Schedule) | | | |
| 17. Bad Debts (Sch. G) | | | |
| 18. Repairs (Attach Schedule) | | | |
| 19. Depreciation (Sch. H) | | | |
| 20. Contributions (Sch. I) | | | |
| 21. Other Deductions (Sch. J) | | | |
| 22. Total Deductions | 191,219.71 | | |
| 23. Net Income (line 10 less line 22) Loss | (2,300.08) | | |

FRANCHISE TAX COMPUTATION

TAXABLE INCOME

| | | |
|---|---|---|
| 24. Net income from Trade or Business subject to apportionment (Line 23, Col. 1 Less sum of amounts on Line 23, Cols. 2 and 3) | | $ |
| 25. X D.C. Apportionment Factor (from Line 5, Schedule N) | | $ |
| 26. Net income from Trade or Business apportioned to the District | | $ |
| 27. Add: Net income from items allocated to the District, Line 23, Column 2 | | $ (2,300.08) |
| 28. Total District Net Income (or Loss) | | |
| 29. Less: Salary for Taxpayer(s) services (Sch. M, Line 6, Col. 4) | $ -0- | |
| 30. Exemption (Sch. M, Line 6, Col. 5) | -0- | |
| 31. Total Taxable Income | Loss | $ (2,300.08) |

TAX

Total amount due

| | |
|---|---|
| 32. Tax (Five per cent of line 31) (PAY IN FULL WITH THIS RETURN) | $ NONE |
| 33. Penalty for late filing (See General Instruction G) ..... % | |
| 34. Interest for late payment (See General Instruction G) from ..... to ..... | |
| 35. Total tax, penalty and interest | $ |
| 36. Less: Tax paid, if any, with application for extension of time in which to file | |
| 37. Payment submitted herewith | $ NONE |

SIGNATURE AND VERIFICATION

I declare under the penalties provided by law that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return. If the return is prepared by a person other than the taxpayer, his declaration is based on all the information relating to the matters required to be reported in the return of which he has knowledge.

(Signature of person (other than taxpayer) preparing return) (Date) (Signature of taxpayer) (Date)

SINROD & TASH, C.P.A.'S, Washington, D. C. 20036

Mailing Instructions: Make check payable to the D.C. Treasurer for the Total Tax. Mail this return and remittance to the FINANCE OFFICE, Revenue Division, Municipal Center, 300 Indiana Avenue, N.W., Washington, D.C. 20001, on or before the 15th day of the fourth month following the close of the taxable year.

**Schedule A—COST OF GOODS SOLD.** (See Specific Instruction 2) (Where inventories are an income-determining factor)

| | | |
|---|---|---|
| 1. Inventory at beginning of year | | |
| 2. Merchandise bought for manufacture or sale | | |
| 3. Salaries and wages | | |
| 4. Other costs per books (attach schedule) | | |
| 5. Total | | |
| 6. Less: Inventory at end of year | | |
| 7. Cost of goods sold (enter here and on line 2, page 1) | | |

1. Was inventory valued at—Cost ☐; lower of cost or market ☐ LIFO ☐; other ☐? If other, attach explanation.
2. Have write-downs been made to inventory? Yes ☐ No ☐. If "Yes," were the write-downs computed on the basis of:
   (a) ☐ Percentage reductions from parts of the inventory
   (b) ☐ Percentage reductions from the total inventory
   (c) ☐ Valuation of individual items.
   If "a" or "b" is checked, enter the percentage of write-downs _____%. For "a," "b," or "c" enter the dollar amount of write-downs $_____ (If not available, estimate and indicate that the figure is an estimate.)
3. Was the inventory verified by physical count during the year? Yes ☐ No ☐. If "No," attach explanation of how the closing inventory was determined.
4. Was there any substantial change in the manner of determining quantities, costs or valuations between the opening and closing inventories? Yes ☐ No ☐. If "Yes," attach explanation.

NOTE: If a direct answer cannot be given to a question, attach explanation.

**SCHEDULE B—INCOME FROM RENT** (See Specific Instructions)

| 1. Address of property | 2. Kind of property | 3. Amount of rent | 4. Depreciation or Depletion (Explain in Sch. H) | 5. Repairs (Explain below) | 6. Taxes, Interest and other expenses (Explain below) |
|---|---|---|---|---|---|
| 1. 3140 Wisconsin Ave. N.W. | Apt. | $ | $ | $ | $ |
| 2. Washington, D. C. | Building | | | | |
| 3. | | | | | |
| 4. | | | | | |
| 5. | | | | | |
| 6. | | | | | |
| 7. see Schedule Attached | | | | | |
| 8. Totals (Enter total of Col. 3 as line 6, Page 1) | | $ 186,187.40 | $ 50,983.23 | $ 13,666.44 | $ 186,570.04 |
| 9. Total of Cols. 4, 5 and 6 (Enter as line 11, Page 1) | | | | | $ 191,219.71 |

**Explanation of deductions claimed in Columns 5 and 6 above.**

| 1. Col. No. | 2. Explanation | 3. Amount | 1. Col. No. | 2. Explanation | 3. Amount |
|---|---|---|---|---|---|
| | | $ | | | $ |
| | | | | | |
| | | | | | |

**Schedule C—GAINS AND LOSSES FROM SALES OR EXCHANGES OF NON-CAPITAL ASSETS** (See Specific Instruction 8)

| 1. Description of Property Held for Two Years or Less | 2. Date Acquired Mo. Day Yr. | 3. Date Sold or Exchanged Mo. Day Yr. | 4. Gross Sales Price | 5. Depreciation Allowed (or Allowable) Since Acquisition (Pursuant Details) | 6. Cost or Other Basis* | 7. Expense of Sale and Cost of Improvements Subsequent to Acquisition | 8. Gain or Loss (column 4 plus column 5 minus the sum of columns 6 and 7) |
|---|---|---|---|---|---|---|---|
| | | | $ | $ | $ | $ | $ |
| | | | | | | | |
| | | | | | | | |

Total Net Gain (or Loss) (enter as line 8, page 1) _____ $ _____

*Explain basis unless cost is used _____

State how property was acquired _____

**Schedule D—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS** (See Specific Instruction 9)

| 1. Description of Property Held for More Than Two Years | 2. Date Acquired Mo. Day Yr. | 3. Date Sold or Exchanged Mo. Day Yr. | 4. Gross Sales Price | 5. Depreciation Allowed (or Allowable) Since Acquisition (Pursuant Details) | 6. Cost or Other Basis | 7. Expense of Sale and Cost of Improvements Subsequent to Acquisition | 8. Gain or Loss (column 4 plus column 5 minus the sum of columns 6 and 7) |
|---|---|---|---|---|---|---|---|
| | | | $ | $ | $ | $ | $ |
| | | | | | | | |
| | | | | | | | |

Total Net Gain or Loss omitted in the computation of net income _____ $ _____

State how property was acquired _____

See Specific Instruction 8, for even though such assets were held for more than two years, they may not be considered "Capital Assets" in certain cases.

**Schedule E—INTEREST EXPENSE** (See Specific Instruction 14)

| Name and Address of Payee | Amount | Name and Address of Payee | Amount |
|---|---|---|---|
| | $ | | $ |

Total (Enter as line 14, page 1, that portion of the total not included in Schedule B) _____ $ _____

**Schedule F—TAXES** (See Specific Instruction 15)

| Nature | Amount | Nature | Amount |
|---|---|---|---|
| | $ | | $ |
| | | | |

Total (Enter as line 15, page 1, that portion of the total not included in Schedule B) _____ $ _____

**Schedule G—BAD DEBTS** (See Specific Instruction 17)

| 1. Taxable Year | Amount of Notes and Accounts Receivable Outstanding at— 2. Beginning of Year | 3. End of Year | 4. Net Income Reported | 5. Sales on Account | 6. Bad Debts Charged Off of No Reserve Is Carried on Books | If A Reserve Is Carried 7. Gross Amount Added to Reserve | 8. Amount Charged Against Reserve |
|---|---|---|---|---|---|---|---|
| 1961 | $ | $ | $ | $ | $ | $ | $ |
| 1962 | | | | | | | |
| 1963 | | | | | | | |
| 1964 | | | | | | | |
| 1965 | | | | | | | |

Check whether deduction claimed represents debts which have become worthless ☐, or is an addition to a reserve ☐

3/2/63
1065-ST

D-30

Employer Identification Number: 52-0801757

Form 3106 LENCSHIRE HOUSE COMPANY
TAXPAYER: c/o Lenkin Realty Co.
ADDRESS: 2424 Penn. Ave. N.W. Washington, D.C.

STATEMENT OF RENTAL OPERATIONS FOR THE PERIOD.

BEGINNING 1/1/65 THRU 12/31/65

| | | | | |
|---|---|---|---|---|
| RENTAL INCOME | $ 186,187.40 | | | |
| Plus: Current Advance Rents Coll. | -0- | $ 186,187.40 | | |
| Less: Prior Advance Rents Reported | | -0- | | |
| TAXABLE RENTAL INCOME | | | $ 186,187.40 | |
| EXPENSES: Depreciation | | $ 5098.23 | | |
| Repairs: General | $ 3231.42 | | | |
| Decorating/Painting | 3969.84 | | | |
| Exmr & Trash Removal | 440.00 | | | |
| Elevator | 1564.00 | | | |
| Air Conditioner | 2934.30 | | | |
| Plumbing | 1526.88 | $ 13666.44 | | |
| Other: Fee to Mgt. Agent | $ 5672.76 | | | |
| Electricity and Gas | 13449.44 | | | |
| Fuel | 4527.09 | | | |
| Advertising | 22.15 | | | |
| Insurance | 1886.49 | | | |
| Interest | 58698.55 | | | |
| Legal and Audit | 350.00 | | | |
| Amortization - Financing | 591.96 | | | |
| Miscellaneous | 643.04 | | | |
| Salaries | 12809.97 | | | |
| Supplies | 1363.44 | | | |
| Taxes-Payroll, Genl., Etc. | 793.18 | | | |
| Taxes - Real Estate | 80992.54 | | | |
| Water | 2699.55 | | | |
| Telephone | 2077.88 | $ 126570.04 | 191,219.71 | |
| NET ~~INCOME~~ (LOSS) BEFORE OTHER INCOME | | | $ (5032.31) | |
| Add: Other Income Miscellaneous | | $ 186.53 | | |
| Wash. Mach. | | 1074.90 | | |
| Vending Mach | | 5.80 | | |
| Rental of Antenna Space | | 1465.00 | 2732.23 | |
| NET ~~INCOME~~ (LOSS) FOR THE PERIOD | | | $ (2300.08) | |

DEPRECIATION SCHEDULE for
Taxpayer's Name: LENGSHIRE HOUSE COMPANY

Address: % Lenkin Realty Co. 2424 Penn Avenue, N.W., Washington, D. C. 20037

Form(s) No. D-30

E. I. No. 52-0801757

Tax Y/Ended: 12/31/65

| Kind of Property | Date Acq'd. | Cost or Other Basis | Adjustment to Basis | K e y | Adjusted Basis | Prior Depreciation | Undepreciated Balance | Method | %age Rate/ Life (Yrs.) | Current Depreciation |
|---|---|---|---|---|---|---|---|---|---|---|
| Locations: BUILDING | | | | | | | | | | |
| Bldg. & Improvements | 2/27/64 | 883,542.45 | | | | 39,759.41 | 843,783.04 | 150% DB | 6% | 50,626.98 |
| Bldg. Maintenance Equipment | 3/27/64 | 1,200.00 | | | | 180.00 | 1,020.00 | S.L | 5 YRS | 240.00 |
| Gas Range | 2/65 | 884 742.15 / 85.89 | | | | 39,939.41 / -0- | 844,803.04 / 85.89 | S.L | 10 YRS | 7.92 |
| Refrigerator | 2/65 | 120.00 | | | | -0- | 120.00 | S.L | 8 YRS | 13.75 |
| Gas Range | 5/65 | 101.43 | | | | -0- | 104.43 | S.L | 10 YRS | 6.96 |
| Refrigerator | 6/65 | 147.81 | | | | -0- | 147.81 | S.L | 8 YRS | 10.78 |
| Gas Range | 7/65 | 104.43 | | | | -0- | 104.43 | S.L | 10 YRS | 5.22 |
| Refrigerators (2) | 8/65 | 240.00 | | | | -0- | 240.00 | S.L | 8 YRS | 12.50 |
| Refrigerator | 11/65 | 159.14 | | | | -0- | 159.14 | S.L | 8 YRS | 3.32 |
| Carpeting | 11/65 | 2,511.33 | | | | -0- | 2,516.33 | S.L | 5 YRS | 41.94 |
| TOTAL BUILDING | | 888,220.18 | | | | 39,939.41 | 848,281.07 | | | 50,969.37 |
| | | | | | | | | | | |
| FURNITURE & EQUIPMENT | | | | | | | | | | |
| Floor Machine | 11/65 | 277.14 | | | | -0- | 277.14 | S.L | 5 YRS. | 13.86 |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| TOTALS | | 888,497.32 | | | | 39,939.41 | 848,558.21 | | | 50,983.23 |

Methods: S.L.- Straight Line; D.B.- Declining Balance; S.D.- Sum-of-the-Digits

S & T Form DS, 12/31/64

## Schedule H—DEPRECIATION (See Specific Instruction 19)

| 1. Kind of property (If buildings, state material of which constructed). Exclude land and other nondepreciable property | 2. Date acquired | 3. Cost or other basis * | 4. Depreciation allowed (or allowable) in prior years | 5. Method of computing depreciation | 6. Rate (%) or life (years) | 7. Depreciation for the year |
|---|---|---|---|---|---|---|
| SEE SCHEDULE ATTACHED | | $ | $ | | | $ |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| Total | | | | | | $50,903.83 |

(Enter as line 19, page 1, that portion of the total not included in Schedule B) $

* Explain basis unless cost is used

## Schedule I—CONTRIBUTIONS OR GIFTS PAID (See Specific Instruction 20)

| Name and Address of Organization | Amount | Name and Address of Organization | Amount |
|---|---|---|---|
| | $ | | $ |
| | | | |
| | | | |

Total (Enter as line 20, page 1, subject to 15 per cent limitation) $

## SCHEDULE J—OTHER DEDUCTIONS (See Specific Instruction 21)

| | | | |
|---|---|---|---|
| | $ | | $ |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Total (Enter as line 21, page 1) $

## Schedule K—BALANCE SHEETS (See Specific Instruction—Schedule K)

| ASSETS | Beginning of Taxable Year | | End of Taxable Year | |
|---|---|---|---|---|
| | Amount | Total | Amount | Total |
| 1. Cash | | 50.00 | | 50.02 |
| 2. Notes and accounts receivable | | 6,273.24 | | 880.76 |
| Less: Reserve for bad debts | | | | |
| 3. Inventories: | | | | |
| (a) Other than last-in, first-out | | | | |
| (b) Last-in, first-out | | | | |
| 4. Investments in Government obligations | | | | |
| 5. Other current assets—including short term marketable investments (Attach schedule) PREPAID EXPENSES | | 10,949.36 | | 9,612.76 |
| 6. Other investments (Attach schedule) | | | | |
| 7. Buildings and other fixed depreciable assets | 854,742.45 | | 888,497.62 | |
| Less: Accumulated amortization and depreciation | 39,939.41 | 844,803.04 | 90,922.64 | 797,574.98 |
| 8. Depletable assets | | | | |
| Less: Accumulated depletion | | | | |
| 9. Land (Net of any amortization) | | 81,530.92 | | 81,530.92 |
| 10. Intangible assets (Amortizable only) | 11,838.50 | | 11,443.86 | |
| Less: Accumulated amortization | 394.64 | 11,443.86 | 591.96 | 10,851.90 |
| 11. Other assets (Attach schedule) | | | | |
| 12. Total Assets | | 955,070.42 | | 909,501.02 |
| LIABILITIES AND CAPITAL | | | | |
| 13. Accounts payable | | 2,302.28 | | 5,287.26 |
| 14. Mortgages, notes, and loans payable (short term): | | | | |
| (a) Banks | | | | |
| (b) Others | | | | |
| 15. Other current liabilities (Attach schedule) ACCRUED TAXES & INTEREST | | 5,201.59 | | 5,260.05 |
| 16. Mortgages, notes, and loans payable (long term): | | | | |
| (a) Banks | | 989,251.85 | | 969,776.91 |
| (b) Others | | | | |
| 17. Other liabilities (Attach schedule) | | (40,690.30) | | (77,772.20) |
| 18. Partners' capital accounts | | 955,070.42 | | 909,501.02 |
| 19. Total Liabilities and Capital | | | | |

## Schedule L—LIST INCOME NOT REPORTED HEREIN BECAUSE CLAIMED NONTAXABLE (Other than Capital Gains Reported in Schedule D) (See Specific Instruction—Schedule L)

| 1. Nature of income | 2. Amount | 3. Nature of income | 4. Amount |
|---|---|---|---|
| | $ | | $ |
| | | | |
| | | | |

**Schedule M.—DISTRIBUTION AND RECONCILIATION OF NET INCOME OR LOSS (See Specific Instructions 29 and 30)**

| 1. Name and Address of Owner(s) | Enter Social Security No. | 2. Percentage of time devoted to this business | 3. Percentage of ownership | 4. Salary claimed (a) | Owner's share(s) of— 5. Exemption claimed (b) | 6. Net loss, if any, D. C. sources (c) | 7. Net income (or loss) from without D. C. (d) | 8. Total income (or loss) net taxable to the unincorporated business (e) |
|---|---|---|---|---|---|---|---|---|
| 1. Jeannette Lenkin Washington, D.C. | 051-03-2065 | Yes | 50% | $ | $ | $(1,150.04) | | $(1,150.04) |
| 2. Sophie Lenkin Washington, D.C. | 578-40-2120 | Yes | 33.33 | | | ( 766.62) | | ( 766.62) |
| 3. Harry A. Lenkin Washington, D.C. | 578-05-8523 | Yes | 16.67 | | | ( 383.42) | | ( 383.42) |
| 4. | | | | | | | | |
| 5. | | | | | | | | |
| 6. TOTALS | | | | (a) $ | (b) $ | (c) $ | (d) $ | (e) $(2,300.08) |

Add amount of income taxed to Unincorporated Business (Line 31, page 1) ..... $ -0-

Total income of Unincorporated Business from within and without the District (Line 32, page 1, col. 1) ..... $(2,300.08)

(a) See Specific Instruction—29

(b) See Specific Instruction—30

(c) From line 28, Page 1.

(d) Difference between line 23, column 1, page 1, and line 28, Page 1.

(e) To be reported by District residents in Schedule "F," Page 4, Form D-40

**Schedule N.—D. C. APPORTIONMENT FACTOR**

| | Column 1 Total | Column 2 In D. C. | Column 3 Factor * |
|---|---|---|---|
| 1. PROPERTY FACTOR | | | |
| a. Average value of real estate and tangible personal property owned by or rented to the unincorporated business and used by the unincorporated business | $ | $ | |
| b. Column 2 divided by Column 1 | | | |
| 2. PAYROLL FACTOR | | | |
| a. Total compensation paid or accrued by the unincorporated business | $ | $ | |
| b. Column 2 divided by Column 1 | | | |
| 3. SALES FACTOR | | | |
| a. All gross receipts of the unincorporated business other than receipts from items of allocable income | $ | $ | |
| b. Column 2 divided by Column 1 | | | |
| 4. Sum of lines 1b, 2b, and 3b | | | |
| 5. Line 4 divided by the figure 3, or 3 reduced by the number of factors, if any, having no denominator | | | |

*Carry all factors to six decimal places.

**Schedule O.—SUPPLEMENTAL INFORMATION (See Specific Instructions—Schedule O)**
**(Answers must be furnished to the following questions)**

1. Date business was begun March 27, 1964
2. Nature of principal business activity Rental of Property
3. If this business has terminated, give date of termination.....
   State how terminated .....
4. Nature of ownership of business Partnership
   (Sole proprietorship, partnership, syndicate, pool, joint venture, etc.)
5. State place where Federal Income Tax Return was filed for the period covered by this return Baltimore
6. State name or names under which Federal Income Tax Return was filed for the period covered by this return Same
7. Is this return made on the accrual basis? Yes If not, describe basis used .....
8. Did you file a franchise tax return for this business with the District of Columbia for the year 1964? Yes If so, state name under which the return was filed .....
   If not, state reasons for not filing .....
9. Has the Internal Revenue Service made or proposed any adjustment in the Federal Income Tax Returns filed by you for this business or have amended returns been filed with the Internal Revenue Service for this business by you for any of the years 1962? NO 1963? NO 1964? NO
   Attach a detailed statement explaining such adjustments, or give date if previously submitted .....
10. Does the return include the income from more than one business conducted by the taxpayer? No If so, list the business(es) below, and the net income as to each:
    .....
    .....
11. Is the income of any other business owned by, or in which the proprietor or proprietors of this business have an interest, reported in a separate return? Yes If so, list name(s) and address(es) of such other business(es) below:
    .....
    .....
12. Is this business an adjunct of a corporation, or affiliated with any corporation? No If so, explain affiliation as to stockholders and proprietors: .....
13. Number of places of business in D. C. One; number without D. C. None
14. Have you filed annual Information Return Forms D-96 and D-99 pertaining to compensation payments for 1965? No
15. If the income reported herein is different from that reported to the Internal Revenue Service, attach a schedule of reconciliation.
16. Did you withhold D. C. income tax from the wages of your employees during 1965? ☑ Yes ☐ No If not, state reason .....

**Petition for Review of a Decision of the District of Columbia Tax Court**

To the Honorable Chief Judge and Circuit Judges
of the United States Court of Appeals for the
District of Columbia Circuit:

1. Jeanette Lenkin, Harry A. Lenkin and Sophie H. Lenkin, trading as Lencshire House Company, the petitioners herein, petition for a review by the United States Court of Appeals for the District of Columbia Circuit, of a decision of the District of Columbia Tax Court made in the above-entitled case.

2. The decision of which review is sought partially affirmed assessments of unincorporated franchise tax for the calendar years 1964 and 1965.

3. The decision of the Tax Court was entered on November 14, 1967.

WERNER STRUPP
Attorney for Petitioners

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

No. 21,573
and
No. 21,755

---

JEANNETTE LENKIN, et al.,
Petitioners,

v.

DISTRICT OF COLUMBIA,
Respondent.

---

MORRIS POLLIN, et al.,
Appellants,

v.

DISTRICT OF COLUMBIA,
Appellee.

---

ON PETITION FOR REVIEW OF A DECISION OF THE DISTRICT OF COLUMBIA TAX COURT AND ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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# CONSOLIDATED BRIEF FOR DISTRICT OF COLUMBIA

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TABLE OF CITATIONS

IN THE
UNITED STATES COURT OF APPEALS
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No. 21,573
and
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ON PETITION FOR REVIEW OF A DECISION OF THE DISTRICT OF COLUMBIA TAX COURT AND ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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# CONSOLIDATED BRIEF FOR DISTRICT OF COLUMBIA

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## STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

In the opinion of the District of Columbia, the issue presented herein is whether, for purposes of future depreciation,

the value of improved real property owned by the taxpayers as the result of distributions of assets to them in complete liquidation of two corporations in which they were the stockholders, includes the amount of certain liabilities of the corporations which were discharged by the taxpayers subsequent to those liquidations.

## PRELIMINARY STATEMENT

On March 28, 1968, the District of Columbia filed a motion to consolidate the above-entitled cases for the purposes of filing a consolidated brief for the District and for oral argument. Such motion was granted by this Court on April 3, 1968. While statements respecting the facts of each case are separately set forth below, the argument pertains to both cases.

## COUNTER-STATEMENT OF THE CASE AS TO PETITIONERS JEANNETTE LENKIN, ET AL.

Respondent District of Columbia is satisfied that the facts involved herein are correctly set forth by petitioners in their Statement of the Case and in their Preliminary Statement on pages 2-3 and 5-6, respectively, of their brief.

## COUNTER-STATEMENT OF THE CASE AS TO APPELLANTS MORRIS POLLIN, ET AL.

Appellee District of Columbia is satisfied that the facts involved herein are correctly set forth by appellants in their Statement of the Case on pages 2-4 of their brief.

## SUMMARY OF ARGUMENT

Where improved real property is received by taxpayers upon the liquidation of a corporation in which they were the stockholders, such property, for purposes of computing deductions for depreciation, is not " *** received in exchange for other property * * * " within the meaning of D.C. Code, 1967, Section 47-1583e(b) and, consequently, the proper basis for computing depreciation is not the market value of such property. The contention that, under such circumstances, the property is "received in exchange" was rejected by this Court in Oppenheimer v. District of Columbia, 124 U.S.App. D.C. 221, 363 F.2d 708 (1966). That decision is controlling here.

In the instant cases, similar factual situations are presented in that, in each, taxpayers who were the former stockholders of liquidated corporations acquired, upon the respective liquidations, certain assets belonging to the

corporations together with certain liabilities incurred by the corporations prior to their dissolution. In each case, the corporate liabilities were discharged by the taxpayers subsequent to the liquidations, and they thereafter operated the respective businesses as partnerships. Under such circumstances, the taxpayers cannot now be allowed to include in their basis for computing depreciation the amounts of such liabilities since the situation presented does not fall within any one of the four exclusive categories for determining basis for depreciation specifically provided by Section 47-1583e, supra.

District law is not silent on the matter of whether or not liabilities of the nature of those here involved are included in the basis for determining depreciation deductions. Rather, the applicable statutory provision explicitly sets forth four, and only four, bases upon which to compute such deductions, and what is involved here is not one of them. Because there is positive law on this subject, the federal statutes, regulations, and other authorities cited by taxpayers are not germane to the resolution of the single issue here presented.

Consequently, the maximum possible basis for depreciation, under any circumstances, in each of the instant cases

is limited to the sum of the amount of the taxpayers' respective capital stock investments in the liquidated corporations and the amounts in each of the earned surplus accounts of those corporations, as of the date of their respective liquidations.

## ARGUMENT

### PROPERTY USED IN A TRADE OR BUSINESS MAY BE DEPRECIATED ONLY IF THE BASIS USED IN DETERMINING THAT DEPRECIATION IS AMONG THE FOUR EXCLUSIVE BASES DEFINED BY THE DISTRICT'S TAXING STATUTE.

The taxpayers in both cases were stockholders prior to the liquidation of their respective corporations. Upon liquidation, the principal assets of the corporations, consisting in each case of an apartment house, were distributed in kind to the stockholders in proportion to their respective stock ownership interests and, thereafter, the businesses of the former corporations were carried on in partnership form. Taxpayers acquired the real properties here involved subject to the indebtednesses of the former corporations and taxpayers subsequently discharged such indebtednesses. In the Lenkin case, the former corporation's real property was encumbered by a first deed of trust securing a promissory note, with an unpaid balance of $795,948.76. In

the Pollin case, the form of indebtedness consisted of the balance due on an unsecured promissory note of the corporation to the National Bank of Washington in the amount of $1,575,000, and accounts payable of the corporation in the amount of $1,763.37.

Taxpayers in the Lenkin case filed franchise tax returns with the District wherein they claimed depreciation deductions of $39,939.41 and $50,836.98 for the taxable periods in question, based upon the present fair market value of their real property of $966,273.37, of which $884,742.45 was allocated to improvements. Taxpayers in the Pollin case filed tax returns for the taxable periods there in question, wherein they included in their cost basis for the real property involved the amount of $1,576,763.37. The predicate for the inclusion of this amount in their cost basis was that since they received the assets of the corporation upon its liquidation, they were personally liable for the debts of the corporation existing as of the time of liquidation. Taxpayers in Pollin further contend that because they became so liable, they are entitled to include the amount of such debts in determining their cost basis, for depreciation purposes, for the corporation's assets received by them upon its liquidation.

Taxpayers' depreciation computations are based on either Section 47-1557b(a)(7) or 47-1583e, D.C. Code, 1967, or both, which sections provide as follows:

Section 47-1557b(a)(7):

"Depreciation.--A reasonable allowance for exhaustion, wear, and tear of property used in the trade or business, including a reasonable allowance for obsolescence; and including in the case of natural resources allowances for depletion as permitted by reasonable rules and regulations which the Commissioners are hereby authorized to promulgate. The basis upon which such allowances are to be computed is the basis provided for in section 47-1583e."

Section 47-1583e:

"The bases used in determining the amount allowable as a deduction from gross income under the provisions of section 47-1557b (a) (7) shall be--

"(a) where the property was acquired after December 31, 1938, by purchase, the basis shall be the cost thereof to the taxpayer;

"(b) where the property was received in exchange for other property after December 31, 1938, the basis shall be the market value thereof at the time of such exchange;

"(c) where the property was inherited or acquired by gift after December 31, 1938, the basis shall be that defined in subsection 47-1583 (b) (3);

"(d) if the property was acquired prior to January 1, 1939, the appropriate basis set forth in subsection (a), (b), or (c) of this section shall be used: Provided, however, That the taxpayer may, at his option, use as the basis the market value of such property as of January 1, 1939;

"(e) the taxpayer may deduct in each taxable year only such amount of depreciation as was actually sustained during that year and such annual deduction shall be based upon the useful life of the property remaining after the date used by the taxpayer in establishing the valuation: Provided, however, That the allowance for depreciation actually sustained during any taxable year may not be increased by any depreciation of the property which was allowable as a deduction in any earlier taxable year: And provided further, That any basis so established may not be changed in a subsequent taxable year, unless written approval of the Assessor has been first obtained."

It should be pointed out that the tax returns in the Lenkin case were filed prior to the decision of this Court in Oppenheimer v. District of Columbia, 124 U.S.App.D.C. 221, 363 F.2d 708 (1966), hereinafter referred to as the "second Oppenheimer case." In the returns in the Lenkin case, taxpayers took the same position as the taxpayers in the second Oppenheimer case, i.e., they claimed that the property received as a consequence of a corporate liquidation was acquired in an "exchange", and that the proper basis was, consequently, the fair market value thereof. Taxpayers,

in their brief to this Court, again argue that contention. However, it would seem obvious that, as a result of the ruling by this Court in the second Oppenheimer case, taxpayers' argument that they are entitled to depreciate the improvements under consideration in this case by reference to fair market value has been resolved against them.

The purpose of the deduction for depreciation is to permit a taxpayer to recover his original cost or investment. This was the clear intent of Congress in setting up certain allowances for depreciation, all of an artificial nature. The District statute is explicit in permitting a deduction from gross income for the depreciation, wear, and tear of property used in a taxpayer's business, but the allowance is to be computed solely in connection with the four bases provided by Section 47-1583e, supra. The District's position in these cases has been succinctly stated by Judge Danaher in his separate opinion in the second Oppenheimer case, wherein he, while agreeing with the result reached by the majority of the Court, stated:

> " * * * The pertinent language of the applicable section expressly provides:
>
> > 'The basis upon which such allowances are to be computed is the basis provided for in section 47-1583e.' (Emphasis added.)

"Congress might well have added, 'that basis--and no other.'

* * *

" * * * the Supreme Court has told us. It 'depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed.' * * * [7]

* * *

"Rather, Congress had purposely limited the allowance of deductions for depreciation of business properties to those categories specifically enumerated in section 47-1583e. Just as one of the purposes of a deduction for depreciation, when allowable, is to permit a taxpayer to recover his cost, Congress has not provided that the value represented by unrealized appreciation in corporate assets, distributed upon dissolution of the corporation, shall be subject to depreciation. As to such value, this taxpayer had no cost to recover. There had been no 'exchange.' And upon that basis our decision should rest."

Moreover, the District submits that the majority opinion in the second Oppenheimer case supports Judge Danaher's reasoning in that that opinion commented as follows:

> "The statutory point of departure is the clear purpose on the part of Congress to allow a deduction from gross income of a

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7. Deputy v. Du Pont, 308 U.S. 488, 493 (1940).

> 'reasonable allowance for exhaustion, wear, and tear of property used in the trade or business * * *.' 47 D.C. Code § 1557b(a)(7). This section does not further define the allowances permissible under it. It says rather that the 'basis upon which such allowances are to be computed is the basis provided for in' Section 1583e, which, as shown in the margin, sets up four categories for the determination of basis for depreciation allowances. * * * " (Footnote omitted.)

Admittedly, the District in the second Oppenheimer case did not in its brief and argument to this Court assert that, because of the inability of petitioner there to bring herself within any of the categories of Section 47-1583e, supra, she could claim no deduction at all. However, it does not follow from this that some other method can be concocted out of whole cloth to allow a depreciation deduction where there is no specific statutory provision, regulation, or other directive upon which to predicate a proper basis for depreciation.

Although the District has neither statute, regulation, nor directive which allows a depreciation deduction for any category other than those described in Section 47-1583e, supra, taxpayers here have nevertheless cited many federal cases in connection with Section 333 of the Internal Revenue Code of 1954 and the federal income tax regulation which

expressly provides that in determining the basis for future gain or loss [which is identical with the basis for depreciation], the amount of any liens on the distributed property must be taken into account.

Taxpayers also refer to § 1.334-2 of the federal income tax regulations, which provides as follows:

> "Whether the mortgage indebtedness is assumed by the shareholders or the property is taken subject to the mortgage is immaterial."

However, taxpayers have overlooked the fact that the District has no similar statute or regulation. The District believes the Tax Court's comment in the Lenkin case aptly describes the weight that should be given to these federal authorities. There that court said:

> "The Court does not believe that the authorities relied upon by the petitioners are pertinent or helpful in the solution of the question here presented. * * * "

Under the factual conditions existing in these consolidated cases, there is no basis whatsoever upon which taxpayers can claim, in the context of their contentions, an allowance for depreciation of the properties involved, because they cannot bring themselves within any of the four exclusive bases provided by Section 47-1583e.

The factual situations presented in both of these cases are virtually identical. In both cases, the initial obligations were those of the corporations and not those of the stockholders. Taxpayers are in effect asking that they be allowed to acquire a stepped-up depreciation base simply because the liabilities of the former corporations were discharged by them subsequent to the corporations' liquidation.

The Tax Court in Lenkin did not base its decision upon Judge Danaher's opinion in the second Oppenheimer case. Nevertheless, that court concluded that the proper depreciation basis for the property involved could not exceed the total of the taxpayers' interest in the earned surplus account plus the return of their capital. This was the same conclusion that the Tax Court had previously reached in the second Oppenheimer case. In the instant cases, the factual situations are virtually identical to those in the second Oppenheimer case, wherein this Court affirmed the Tax Court's decision.

Assuming, arguendo, that this Court does not choose to follow Judge Danaher's opinion in the second Oppenheimer case, it would appear that the only basis for depreciation in either the Pollin or Lenkin cases would be the taxpayers'

interest in the earned surplus account plus the return of their capital.

Thus, in Pollin, the maximum possible basis for depreciation is limited to the sum of the capital stock investment of taxpayers and the earned surplus of the corporation as of the date of liquidation. In Lenkin, the maximum possible basis for depreciation is limited to the taxpayers' capital stock investment, since the earned surplus account showed a deficit.

## CONCLUSION

It is respectfully submitted that the affirmance by the District of Columbia Tax Court of the assessments against petitioners in No. 21,573 of unincorporated business franchise taxes were correct and should be sustained, and it is further respectfully submitted that the order of the United States District Court for the District of Columbia denying appellants' motion for partial summary judgment in No. 21,755 was correct and should be affirmed.

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